# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~226~~ 55

ISAAC KEMPNER IMPLEADED WITH JOHN D. LEVINSON,
APPELLANTS,

vs.

CHARLES B. CHURCHILL, LEONARD K. SMITH, LEWIS FREIDLANDER, JULIUS STICH, AND LEPOL LITHANER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 26, 1867.

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There has been no deduction from rent for repairs. I find my rent was raised last October from $25 to $45 a month.

C. C. MUNCK.

Sworn to before me this 21st day of June, 1864.

W. REDIN, *Aud.*

4 *Deposition of Jos. C. G. Kennedy.*

Jos. C. G. Kennedy:

In the latter part of Sept., or early in October, 1857, as the agt. of B. H. Cheever, I called upon Jesse B. Wilson, grocer, on Penn. avenue, and informed him of a divorce having been granted by some court in Indiana, divorcing said Cheever from the bonds of matrimony. I notified said Wilson that he would be held personally responsible for further rents paid on a to Annie J., late wife of Cheever. He stated that he had made large advances on rents yet to become due.

I showed him a copy of the decrees above referred to, being a paper duly authenticated as such, and having all the evidences of being an official copy thereof, which he examined, and of the character whereof he was made perfectly aware.

JOS. C. G. KENNEDY.

Sworn to by J. C. G. Kennedy, the 21 June, 1864, before me.

W. REDIN, *Aud'r.*

5 *Depositions of Jesse B. Wilson.*

Deposition of Jesse B. Wilson:

Jesse B. Wilson, one of the defendants, offered as a witness for the defendants by Walter S. Cox, esq., said defendant's counsel—Mr. Dinsmore, counsel for complainant, objecting to his competency—being by the auditor sworn, says, on examination by Mr. Cox:

1. First question. Look at the accounts marked W 1 and W 2, attached to Mrs. Worcester's deposition, and state whether they correctly exhibit the indebtedness of Mrs. Worcester to you.

(The introduction of Mrs. Worcester's deposition objected to by Mr. Dinsmore. The accounts objected to by him because they are not the original, but transcripts of Mr. Wilson's books.)

Answer. The accounts are correct.

2. Second question. State what these charges are taken from.

6 Answer. They are all taken from my books, except the statement of the promissory notes. Some of those notes were, I presume, upon my books, and some not. When I sent a draft I entered it on my books; but when a draft was drawn on me, I accepted it, and kept it as a voucher without entering it on my books.

3. Third question. State what has become of your books.

Answer. My ledgers I have here with me—my ledgers for, I think, the whole period. Some of the books containing the original charges were destroyed. Some we have. I think we have the day-books, which are made up every evening from the counter books or blotters. We at first thought they were destroyed, but on looking for other books some of them were found. The blotters were mostly destroyed.

3. Third question. State on whose credit the money and merchandize charged by you were furnished.

# SUPREME COURT OF THE UNITED STATES.

## No. 226.

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vs.

CHARLES B. CHURCHILL, LEONARD K. SMITH, LEWIS FREIDLANDER, JULIUS STICH, AND LEPOL LITHANER.

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1 . Pleas in the Circuit Court of the United States for the northern district of Illinois, sitting in chancery at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district; and in the absence, pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said Circuit Court, on Tuesday, the eleventh day of June, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-first year.

WILLIAM H. BRADLEY, *Clerk.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopol Lithauer, *vs.* JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

Be it remembered, that on the seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty-six, came Chares B. Churchill, Leonard K. Smith, Lewis Friedlander, Julius Stich, and Leopold Lithauer, complainants, by Messrs. Hoyne
2 and Horton, their solicitors, and filed in the office of the clerk of the Circuit Court of the United States for the northern district of Illinois, at Chicago, in said district, their bill of complaint against John D. Levinson and Isaac Kempner, defendants; and also, at the same time, filed their bond for costs in said entitled cause; and also, at the same time, sued out of said clerk's office their writ of subpœna against said defendants, which said bond, bill of complaint, and said writ, together with the memorandum and notice for injunction thereto attached, and the marshal's return to the same, are, respectively, in the words and figures following, to wit:

Circuit Court, March Term, A. D. 1866.

*Bonds for costs.*

CHARLES B. CHURCHILL *et al.* *vs.* JOHN D. LEVINSON *et al.* } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of pay-
3 ment by the plaintiffs of any costs ordered or adjudged to be paid by them, we hereby agree and stipulate that execution may issue against our property for any costs taxed against them.

Dated this 17th day of April, A. D. 1865.

HOYNE & HORTON.
WILSON & ASAY.

Endorsed: Filed April 17th, A. D. 1866. Wm. H. Bradley, clerk

Circuit Court of the United States for the seventh circuit and northern district of Illinois—sitting in chancery.

*Bill of compl't.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

To the judges of the Circuit Court of the United States for the seventh circuit and northern district of Illinois:

Charles B. Churchill and Leonard K. Smith and Lewis Friedlander, Julius Stich, and Leopold Lithauer, citizens of the State of New York, bring this their bill against John D. Levinson and Isaac Kempner, citizens of the State of Illinois, and residing in said district aforesaid; and, therefore, your orators complain and say that heretofore, to wit, in the March term, in the year of our Lord one thousand eight hundred and sixty-six, in the Circuit Court of the United States for the seventh circuit and northern district of Illinois, by the
4 consideration and judgment of said court, your orators, Charles B. Churchill and Leonard K. Smith, recovered against the said John D. Levinson, one of the defendants in this suit, the sum of eleven hundred and forty-eight dollars for the damage which they had sustained, as well by reason of the not performing certain promises and undertakings made by the said defendant, Levinson, as for the costs and charges of your orators, Churchill and Smith, by them about their suit in that behalf expended, which were adjudged to your orators, Churchill and Smith, in and by the said court whereof the said defendant, JohnD. Levinson, was convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had, and to which greater certainty your orators pray leave to refer, will more fully and at large appear.

Your orators further complain and say, that heretofore, to wit, in the March term, A. D. 1866, in the Circuit Court of the United States for the seventh circuit and northern district of Illinois, by the consideration and judgment of said court, your orators, Lewis Friedlander, Julius Stich, and Leopold Lithauer, recovered against the said John D. Levinson, one of the defendants in this suit, the sum of three thousand and forty-six dollars for the damage which they had sustained, as well by reason of the not performing certain promises and undertakings made by the said defendant, Levinson, as for the costs and charges of your orators, Friedlander, Stich, and
5 Lithauer, by them about their suit in that behalfe expended, which were adjudged to them in and by the said court whereof the said defendant, Levinson was convicted, as by the record of the said last-mentioned judgment in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orators pray leave to refer, will more fully and at large appear.

And your orators further shows unto your honor, that the said judgments so recovered in manner aforesaid, remaining in full force and effect, and the damages and costs aforesaid unpaid and unsatisfied, your orators, on or about the sixteenth day of April, in the year of

our Lord one thousand eight hundred and sixty-six, for the purpose of obtaining satisfaction of the said judgments, sued and prosecuted out of the said court three writs of the people, called fieri facias, directed to the United States marshal for the northern district of Illinois, that being the district in which said defendant resided at the time of the issuing of said writs, by which said writs the said marshal was commanded that of the goods, chattels, lands, and tenements of John D. Levinson, defendant, in your district, you cause to be made the sum of eleven hundred and seventy dollars and twenty-five cents upon one of said writs; three thousand sixty-seven dollars and twenty-five cents upon another, which your orators in the
6 said Circuit Court respectively recovered against the said defendant, Levinson, and that he should have the money at the clerk's office of said court at Chicago, in said district, in ninety days from the date thereof, to satisfy the judgments so recovered by your orators as aforesaid; and that he should have then and there those writs. And your orators further show unto your honor, that the said writs of fieri facias, before the delivery thereof to the said marshal of the said district aforesaid, were duly endorsed, and were afterwards, and on or about the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-six, delivered to the said marshal to be executed in due form of law.

And your orators further show unto your honor, that the said marshal of said district aforesaid, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty-six, returned on the said writs to him in that behalf, directed and delivered as aforesaid, that he had demande goods, chattles, lands, and tenements of John D. Levinson, whereon to satisfy the within writ, and that said Levinson failed and refused to turn out any property, or to pay the amount of the judgment therein specified, or any part thereof, in money; and I am unable to find any property of said defendant in
7 my district, and therefore return this writ wholly unsatisfied, as by the said writs of fieri facias and the directions and the return of said marshal endorsed thereon as aforesaid, filed in office of the clerk of the said Circuit Court on the day and year last mentioned, will more fully appear, and to which, or to a copy thereof, your orators pray leave to refer.

And your orators further show unto your honor, that the said judgments still remains in full force and effect, not reversed or satisfied, or otherwise vacated; and that the said John D. Levinson has not paid the same, or either of them to your orators, or any of them, but hath hitherto wholly neglected and refused so to do; and your orators further show unto your honors that there is now actually and equitably due to your orators upon the aforesaid judgments the sums of eleven hundred and seventy dollars and twenty-five cents to your orators, Churchill & Smith, three thousand sixty seven dollars and twenty-five cents to your orators, Friedlander, Stich and Litthauer, together with interest thereon from the sixteenth day of April, one thousand eight hundred and sixty-six, over and above all claims of said defendant by the way of set-off or otherwise; and your orators

further show unto your honors that the said John D. Levinson
8 has been engaged as a dry goods merchant in the city of Chicago, and that the said judgments were recovered upon an indebtedness accrued in their favor against said defendant Levinson by the purchase of complainants of large amounts of dry goods, stock, wares and merchandise purchased of them in the city of New York, where said complainants reside and are doing business as merchants. That as your orators are informed and verily believe the said defendant Levinson, on or about the fifteenth day of March, A. D. 1866, or less than one month before this fraudulent sale of all his stock of merchandise, as hereinafter referred to, did then make divers and sundry large purchases of dry goods, merchandise of divers mercantile firms in said city of New York, amounting in the aggregate to the sum of about eleven thousand seven hundred dollars, in which sum was included purchases made of complainants, for and upon account of which the said judgments have been recovered, and that the said goods, wares, and merchandise were transported to the city of Chicago and incorporated with the general stock of goods then on hand and held by said Levinson in his store and place of business in said city of Chicago; that soon after said purchases of said goods were made, and their arrival in Chicago as aforesaid, to wit, on or
9 about the ninth day of April, A. D. 1866, one Isaac Kempner, confederating and colluding said John D. Levinson how to cheat your orators, and to hinder, delay, and defraud the creditors of said John D. Levinson, did propose to purchase the entire stock of said Levinson, then on hand in his said Chicago store, for a grossly inadequate consideration, to wit, for fifty-five cents on the one dollar worth of said stock, and to have a transfer or bill of sale thereof executed to him the said Isaac Kempner, of all said stock, so that he might hold the same at law as against all the creditors of whom said goods were purchased, and as against all creditors to whom said John D. Levinson was in any wise then indebted on account of said goods, or on any other account whatsoever; that the said Isaac Kempner told said Levinson before the said purchase he wished that instead of twelve thousand dollars' worth (the amount of goods which said Levinson informed said Kempner he had recently purchased) he wished he had purchased thirty thousand dollars, so he might go on with him; that said Levinson told said Kempner that he had bought the said goods on three or four months' time credit in New York, and showed him the original bills of his said
10 purchases; that the said Kempner then told said Levinson he thought of going to Omaha, and wanted to buy a cheap stock of goods, and would give him fifty-five cents on the dollar for all of his stock then on hand, which being then refused, the said Kempner again saw him, said Levinson, and said he had better take the offer, as his creditors were after him; "that he had better sell out to him and put the money in his said Levinson's pocket and let his creditors go to the devil;" that if said Levinson intended to do anything about it, he had better do it very quick, as there was a report about town about his selling out at less than cost, and some papers or attachments to take said goods, &c.

And further, complainants allege on their information and belief, that on Saturday, the seventh day of April, A. D. 1866, the said Kempner further told said Levinson that if he waited until Monday before selling, he, Kempner, would be gone, and if he purchased the goods he would remove them at once from the store, as, if he left them there, the creditors would replevy them certain; and your orators further complaining, show unto your honor that acting upon such false and fraudulent instigation, advice, and counsel, as they are informed and verily believe to be true, the said defendant John D Levinson did conclude a sale of his entire stock in trade and
11 business, amounting in value at cost prices to about the sum of seventeen thousand six hundred dollars, at a discount or deduction off the cost prices of about forty-five cents on the dollar, and making the aggregate amount of the pretended consideration or price the gross sum of about nine thousand seven hundred dollars.

That the inventory of said sale was made, and the said sale was concluded and made on Sunday, eighth day of April, A. D. 1866, when the said Kempner took the actual possession thereof; and on Monday, the ninth day of April, the said Kempner removed said goods to a place in Chicago known as 77 Lake street, where, as your orators are informed, they still remain in said Kempner's possession as aforesaid; and your orators are also informed that a pretended bill of sale in writing was made out and signed, in which was falsely expressed the full cost price or value of said goods instead of the real or pretended consideration, the said Kempner saying "he wanted it done in this way, so that when the New York creditors came he could show them that he had paid for the goods dollar for dollar at the original cost of the goods;" and your orators further allege and show unto your honor, that as they are informed and verily believe the same to be true, the said sale was contrived in collusion
12 and fraud, to cheat and defraud said complainants, as well as all others, the creditors of said John D. Levinson, and that the said Isaac Kempner contrived and conspired with the said Levinson to cheat and defraud said creditors having such sale so made as aforesaid, with the design and purpose of keeping said goods, wares, and merchandise beyond the reach of execution or process at law, and that said sale was in fact made for such purpose to hinder and delay creditors; and further, your orators charge the fact to be that the said Isaac Kempner in prosecution of his said fraudulent designs further intends to take and remove said goods beyond the limits of this State and out of the jurisdiction of this court, unless speedily restrained therefrom by process of injunction from this court, and that he will sell and convert the same to his own use to the irreparable injury and damage of said complainants; that the said Levinson has no means or property subject to execution at law of which complainants have any knowledge, that can be reached or applied to the satisfaction of said indebtedness, and that besides the means so realized on said stock, he is of no pecuniary responsibility, and has no property whatsoever, and that the said Isaac Kempner is in fact now
13 a fraudulent holder of said property, having obtained the

possession thereof without any adequate consideration paid therefor, and with the fraudulent design of holding the same at law under such colorable and fraudulent sale in the joint interest of himself and said Levinson, so that the said complainants and the creditors of said Levinson cannot reach or apply said goods to the satisfaction of the said judgments by legal process as they otherwise might.

And your orators further charge, upon their information and belief, that said Isaac Kempner has in his possession or under his control and knowledge all the moneys, accounts, property, and credits of said Levinson arising out of such fraudulent purchases so made, and the transfer and sale of said goods, and that he is collusively seeking to defeat, hinder, and delay said creditors of said Levinson and your complainants in their collection of said debts and judgments at law, and also that the said Levinson is possessed of or has means under his control and knowledge which cannot be reached by process of law and of which your orators seek a particular discovery herein, and that the said Kempner has other means and property of said Levinson in his possession, under his control or knowledge, which cannot be reached by process at law, of which your said orators seek a particular discovery herein. And that the said Isaac Kempner
14 will waste, sell, dispose of, remove or convey away said property beyond the reach of process of this court and the jurisdiction thereof, unless speedily restrained therefrom, and will sell or dispose of said stock of goods, wares, and merchandise to bona fide purchasers without notice, unless restrained by injunction issuing out of and under the seal of this honorable court, and your orators will hoped that the said defendant, John D. Levinson, would have paid to your orators the amounts due them on said judgments, or would have applied for that purpose any property, money, debts, or other equitable interests or things in action belonging to him, or in which he was in any way interested, as in equity and good conscience he ought to have done.

But now so it is, may it please your honor, that the said defendants, combining and confederating together and with divers other persons to your orators unknown, but whose names, when discovered, they pray may be inserted herein with proper and apt words to charge them, and contriving how to injure and defraud your orators in the premises, neglect or refuse to pay the amount so due to your orators on their said judgments, or to apply for that purpose any property, money, debts or other equitable interest or things in action belonging to the said defendant, John D. Levinson, and for reason whereof the said defendants set up a variety of unfounded pretences, all which actings, doings, neglects, and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury
15 of your orators in the premises. In tender consideration thereof, and for as much as your orators are remediless in the premises, at and by the direct and strict rules of the common law, and cannot have adequate relief save in a court of equity where matters of this and a similar nature are properly cognizable and relieva-

ble, to the end therefore that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are required to answer an answer under oath being hereby expressly waived, that is to say the said defendants may fully set forth and discover, according to the best of their knowledge, remembrance, information, and belief, the nature and situation, amount, and value of all the property, interests, and effects of the said defendant, John D. Levinson, including all things in action, of whatever nature or kind, with all the particulars relating thereto, and that they may answer and state whether at the time of filing this, your orators' bill of complaint he, the said defendant, John D. Levinson, has not debts due to him to a considerable amount, and if so, that they may state particularly the amount of such debts respectively, and from whom the same are due and what security is held therefor; and, also, that they my state which and what amount of said debts are good and collectable, and what amount bad or doubtful, and whether at the time of filing this, your orators' bill of complaint, they have not some property, real or personal, in law or equity belonging to him or held in trust for him, or in which he has some beneficial interest of some kind or description, and if so, that they may state and set forth a full, true, and particular account thereof, and the nature and value of his interest therein; and that they may also state whether they have not money of some kind in their possession, or under their control, or deposited to their credit, or for their use, or in some manner or way held for his use and benefit, and if so, that they may state and set forth particularly the amount thereof and how and by whom the same is held, and that they may also state, whether they have any other equitable interest or thing in action, or other means belonging to him, or in which he is in any way interested, whereby they could pay any part of the amount so as aforesid due to your orators upon their said judgments against him the said defendant John D. Levinson; and if the said defendant last named has made any sale, assignment, or transfer of his property and effects or any part thereof, that then the said defendants may state and
16 set forth each for himself, jointly or separately, generally, but not in items, what property or effects have been so sold, assigned, or transferred, and the value thereof, and particularly when and to whom, and for what purpose, and upon what terms and conditions, such sale, assignment, or transfer was made; and what has been done under such sale, assignment or transfer and what has been done with the property or effects so sold, assigned, or transferred, and the avails thereof, and that the said defendants may specially state or set forth, each for himself, jointly or separately:

1st. Whether said Levinson did not sell said goods, wares and merchandise to said Kempner, on the day above alleged, for the consideration and in the manner alleged, with a view to forestall any action on the part of said creditors.

2nd. If the said Levinson did not sell for such purpose, then state for what purpose said sale was made and all the circumstances thereof, when made, and the amount or consideration therefor.

3rd. Whether said Kempner did not propose to buy said goods and remove them so as to prevent the creditors of said Levinson from collecting their debts by process of law.

4th. Whether said Kempner did not propose to said Levinson that he had better make such sale to him, put the money in his pocket, and let his creditors go to the devil. If this was not the language used, and whether the sale was not made upon the consideration stated.

17 5th. Whether the said Kempner has not other means, property, or moneys, notes, accounts, or choses in action, within his control, knowledge, or keeping, or in his possession, belonging to said Levinson, and what amount of money he has realized in any sale made of the goods aforesaid, or any portion thereof, and what securities he has received or now holds on account of said goods so purchased, and the full value of said goods, and make and return a full inventory and account thereof in this court.

6th. That said Levinson will discover and return to this court especially the amount of said goods on hand, the amount of money actually paid therefor, the amount realized on any sale thereof, the number and kind and amounts of securities, notes, bonds, obligations, or other things now held by him and received on acount of said sale, and all other securities, notes, obligations, or accounts whatever, which have come into his hands, possession, or control, by sale, assignment, or otherwise, of said Levinson, or upon his account from any other person or persons.

7th. That said Levinson and said Kempner may respectively answer unto this court upon the charges of this bill, whether the said Kempner did not have knowledge of the purchases aforesaid made by said Levinson of the stock in question, and whether the said sale was not made to remove said goods beyond the reach of the creditors of said Levinson and the process of this court; whether the sale

18 was not designed to defeat a collection of the debts due by said Levinson, and all other the facts and circumstances attending said sale to said Kempner.

And that the said defendants, or some of them, may be decreed to pay your orators the amounts so as aforesaid due to them for principal and interest on their said judgments, together with your orator's costs and charges in this behalf sustained; and may be decreed to apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant, John D. Levinson, or held in trust for him, or in which he is in any way or manner beneficially interested; and that the said defendants may be enjoined and restrained from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts or demands due to John D. Levinson, or any bills, bonds, notes, drafts, checks, book accounts,

mortgages, judgments, or other debts due to him, whether in his possession or held by some other person in trust for him, or to his use or benefit, and also from selling, assigning, transferring, or in any manner incumbering or disposing of, or intermeddling with, any money in coin, bank bills, drafts or checks, belonging to John D. Levinson, whether in his possession or held by any person in trust for him, use or benefit, or any stock or interest in any private or incorporate company, or any property, real or personal, things in action, or chattels real, held by them or by any other person
19 for them, or in which he has any interest whatever, except where such trust has been created by, or the fund so held in trust has proceeded from, some person other than the said defendant, John D. Levinson.

And your orators further show unto your honor that on or about the fifteenth day of August, and before that time, in the year of our Lord one thousand eight hundred and sixty-six, the said defendant, John D. Levinson, was engaged in the mercantile business at the city of Chicago, district aforesaid, and that your orators are informed and believe that in the course of the said mercantile business of the said defendant, John D. Levinson, divers persons became indebted to him in a large amount, and that the said defendant last named at the time of filing this your orator's bill of complaint has debts due him, and for which he holds divers securities and evidences to a large amount, and has divers goods, wares, and merchandise, and other articles of personal property which belong to him, or in which he in some way or manner beneficially interested, and that he has equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of your orators' said judgments against him, the said defendant, John D. Levinson.

And your orators also charge that the said defendant, John D. Levinson, is owner of, or in some way or manner beneficially interested in, some real estate in this or some other State, or some chattels real, of some name or kind, or some contract or agreement relating to real estate or the rents, issues, and profits of some
20 real estate, and also that the said defendant Levinson is owner of, or in some way beneficially interested in, the stock of some company, incorporated, or unincorporated, or in the profits of some company or copartnership; and also that he has in his possession at the time of the filing of this your orators' bill of complaint some money in coin or bank bills, or that he has money deposited in some bank, or elsewhere, to his credit, or that he has money or securities for the payment of money held by some other person in trust, or otherwise, for his benefit.

And if the said defendant, John D. Levinson, made any sale, assignment, or transfer of his property or effects, or any part thereof, your orators expressly charge that they believe such sale, assignment, or transfer is merely colorable, and made with a view of protecting the property or effects of said defendant Levinson so assigned, and placing the same beyond the reach of your orators' said judg-

ments, and enabling the said defendant Levinson to control and enjoy the same and the avails thereof, or to hinder and delay your orators in the collection of their debts now in judgment as aforesaid, and that so it would appear if the said defendant Levinson would state and set forth when and to whom such sale, transfer, or assignment was made, and what was the amount in value of the property or effects so sold, assigned, or transferred, and what were the terms upon which such sale, transfer, or assignment was made, and
21 disposition has been made of the property or effects so sold, assigned, or transferred, and in whose possession the same now is, or what has been done with the avails thereof; and your orators claim a full and complete discovery of all such property, effects, and things in action, belonging to the said defendant Levinson, and of all trusts whereby any property, debts, or effects are held for the use or benefit of the said defendant last named, and of every sale, assignment, or transfer which the said defendant last named has made of his property, debts, or other effects, and of the person or persons to whom such sale, assignment, or transfer has been made, the amount and value of the property, debts, or other effects so sold, assigned, or transferred, and the trusts and other conditions upon which such sale, assignment, or transfer was made, and all the facts and circumstances relating thereto, and particularly what is the situation of the property, debts, or other effects sold, assigned, or transferred at the time of filing this your orators' bill of complaint.

And your orators further show unto your honor that they have reason to believe, and do believe, that the said defendant last named has property and other equitable interest, things in action, or effects of the value of more than four hundred dollars, exclusive of all prior first claims thereon, and which your orators have been unable to reach by execution on said judgment against the said defendant last named, and that this your orators' bill of complaint is not exhibited by collusion with the said defendants, or with any other person, or for the purpose of protecting the property or effects
22 of said defendant Levinson against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the judgments so as aforesaid recovered by your orators against the said defendant.

Your orators pray that your honor will order an injunction to issue out of and under the seal of this honorable court, restraining the said John D. Levinson and Isaac Kempner, and each of them, their agents and attorneys from further interference with the said stock of goods and their removal or sale, until the further order of this court, and that Isaac Kempner, his agents or attorneys, may be restrained from selling, disposing of, or removing said goods, or any portion thereof, and from all, or any manner of, interference therewith, and that he, said Kempner, be also restrained from selling, assigning, or transferring to any person or persons any portion of the accounts, notes, or securities taken or realized on exchange for said goods, or any portion thereof, and all or any accounts, notes, or choses in

action whatever received from said Levinson, and that he shall, in all respects, refrain from any action whatever in relation to all said property, goods, notes, accounts, securities, moneys, or other thing whatsoever received, or however received, from or on account of said Levinson, by any bargain, sale, transfer, or assignment by, from, or through him, or upon his account.

And that the said defendant Levinson may also be in like manner prohibited from making any assignment of his property, and
23 from conferring any judgment for the purpose of giving preference to any other creditor over your orators, and from doing any other act to enable other creditors to obtain his property; and that a receiver may be appointed according to the course of practice in this court, and with the usual powers of receivers in like cases, of all the property, equitable interest, things in action, and effects of the said defendant, John D. Levinson, and of the said stock of goods, wares, and merchandise, and that your orators may have such further, or such other relief in the premises as the nature of their case shall require, and as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orators the people's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendants, John D. Levinson and Isaac Kempner, and to their counsellors, attorneys, solicitors, trustees, and agents, therein and thereby commanding and strictly enjoining the said defendants, and the persons before mentioned, in manner aforesaid, and may it please your honor to grant unto your orators the people's writ of of supœna, issuing out of and under the seal of this honorable court, to be directed to the said defendants, John D. Levinson and Isaac Kempner, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty, to be therein inserted, that they personally be and appear before the judges of the Circuit Court of the United States
24 for the seventh circuit and northern district of Illinois, at the court-room, in the city of Chicago, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience; and your orators will ever pray, &c.

CHARLES B. CHURCHILL,
LEONARD K. SMITH,
LEWIS FRIEDLANDER,
JULIUS STICH, and
LEOPOLD LITHAUR.
By HOYNE & HORTON,
*Their Solicitors.*

HOYNE & HORTON,
*Solicitors and of Counsel for Complainants.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

On the seventeenth day of April, one thousand eight hundred and sixty-six, personally came before me Walter Sipe, who, being duly sworn, saith that he is the duly anthorized agent of the complainants named in the above bill of complaint, that he has heard the foregoing bill of complaint read and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things therein stated upon information and belief, and as to these matters he believes it to be true.

WALTER SIPE.

E. A. DRUMMOND, *U. S. Com'r.*

Endorsed: Filed April 17, 1866. Wm. H. Bradley, cl'k.

25 *Subpœna.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to John D. Levinson and Isaac Kempner, greeting:

We command you, and every of you, that you appear before our judges of our Circuit Court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of May next, to answer the bill of complaint of Charles B. Churchill and Leonard K. Smith, and Lewis Friedlander, Julius Stich and Leopold Lithaner, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounce against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the 90th.

[COURT SEAL.] WM. H. BRADLEY, *Clerk.*

[50-cent revenue stamp, cancelled.]

26 *Memorandum.*

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

*Notice for injunction.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } In chancery, March term, A. D. 1866.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

To John D. Levinson and Isaac Kempner:

Take notice that the complainants will move this honorable court on Wednesday, the 18th day of April, 1866, at the going in of the court on that day or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within-named defendants, Isaac Kempner and John D. Levinson, in accordance with the prayer of the bill herein.

Dated this 17th day of April, A. D. 1866.

Yours &c.,

HOYNE & HORTON,
*Comp'ts' Solicitors.*

27 I have served the within subpœna and the notice of motion thereon, endorsed upon the defendants named therein, in manner following, to wit, by delivering a copy thereof to Isaac Kempner, one of said defendants, personally on the 17th day of April, A. D. 1866, and by delivering a copy thereof to John D. Levinson, the other of said defendants, personally on the 18th day of April, in the year aforesaid.

Dated April 18th, 1866.

J. R. JONES, *U. S. Marshal.*
By A. B. COTES, *Deputy.*

*Marshal's fees.*

| | |
|---|---|
| 2 services | $4 00 |
| 2 copies | 1 00 |
| 2 miles | 12 |
| | $5 12 |

Endorsed: Filed May 5th, A. D. 1866. Wm. H. Bradley, clerk.

27⅛ On this day, to wit, the eighteenth day of April, A. D. 1866, appears in the record of the proceedings of the above entitled cause, the order for temporary requisition, in the words and figures following, to wit:

*Order for temporary injunction.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithauer,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

Now come the complainants, by Hoyne & Horton, their solicitors, who move the court for an injunction against the defendants, as

prayed for in the bill of complaint filed herein; and if appearing to the court that said defendants had been duly served with process, and notified of the intention of the complainants to apply for said injunction, and the defendant, Isaac Kempner, appearing by his solicitors to resist said motion, and after hearing the arguments of counsel, it is ordered by the court, that, upon the complainants filing a bond herein, to be approved by the court, in the penal sum of one thousand dollars, to pay the defendants all such damages as may be ordered or decreed to them by the court, by reason of the
27¼ injunction granted herein against them, that a temporary injunction issue against said defendants, enjoining and restraining them from removing without the jurisdiction of this court the goods, merchandise, and property mentioned in the bill of complaint herein, and from doing any act to prejudice the rights of the complainants until the further order of the court.

*Temporary injunction bond.*

Bond for temporary injunction in the words and figures following, to wit:

Know all men by these presents, that Edward Jessel, of the city of Chicago, is held and firmly bound, to Isaac Kempner and John D. Levinson, their executors, administrators or assigns, in the penal sum of one thousand dollars, firmly by these presents, for which payment, well and truly to be made, he binds himself, and his executors, and administrators, and assigns, firmly by these presents; signed and sealed with his seal, and dated this 18th day of April, A. D. 1866.

The condition of the above obligation is such that Charles B. Churchill, Leonard K. Smith, Lewis Friedlander, Julius Stich,
27½ and Leopold Lithauer, did on the said 18th day of April, 1866, obtain on a bill in chancery, filed in the United States Circuit Court for the northern district of Illinois, an order or temporary injunction to restrain the said Isaac Kempner, from effecting the removal or sale, or making any interference with those certain goods, wares, and merchandise, described in said bill, and sold him by said John D. Levinson, more particularly described in the prayer for said injunction contained in said bill in chancery.

Now therefore, of the above named, Charles B. Churchill, Leonard K. Smith, Lewis Friedlander, Julius Stich, and Leopold Lithauer, and the said Edward Jessell, shall well and truly pay such costs and damages as may be adjudged against them, or any, or all of them, in the dissolution of such order or injunction, together with all such damages as the said Isaac Kempner and John D. Levinson, or either of them, may sustain by reason of the wrongful issuing of such injunction, in case the goods shall not be held, or the injunction shall not be continued, then this obligation to be void, otherwise to be and remain in full force and virtue.

Executed and acknowledged in presence of me.

[SEAL.] EDWARD JESSEL.

Endorsed: Filed April 18th, 1866. Wm. H. Bradley, clerk.

27¾ On this day, to wit, the fifth day of May, A. D. 1866, come the said defendant Isaac Kempner, by Goodwin, Jarrel, and Goodwin, his solicitors, and filed his answer in said entitled cause, which answer is in the words and figures following, that is to say:

28 Circuit Court of the United States, northern district of Illinois.—In chancery.

*Answer of defendant, Isaac Kempner.*

The separate answer of Isaac Kempner, one of the defendants to the bill of complaint of Charles B. Churchill, Leonard K. Smith, Lewis Friedlander, Julius Stich, and Leopold Lithauer, complainants:

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benfit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained for answer thereto, or to so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says, that this defendant has no personal knowledge whether or not the said John D. Levinson, in said bill of complaint mentioned, was ever indebted to said complainants, or that said complainants obtained the judgments in that behalf in said bill mentioned; but this defendant has been informed and believes, and therefore charges that at the time of the said
29 alleged entry of judgment in favor of the said complainants respectively, there was no debt then due and matured from the said John D. Levinson to either of the said complainants, but that the same judgments were each respectively entered up, upon the voluntary confession of the said John D. Levinson, for the purpose of using the same as a foundation for the said bill of complaint, and upon a fraudulent conspiracy between the said complainants or their agents and the said John D. Levinson, to use the said proceedings and file the said bill against this defendant, unjustly and wrongfully to enforce payment of the debts of the said John D. Levinson out of the property of this defendant, purchased of the said John D. Levinson in good faith, and for which this defendant has paid the said John D. Levinson full value in cash; and further that said bill is filed by said complainants in fraudulent collusion with the said John D. Levinson to procure the payment of his debt otherwise than out of his own property, and to screen him, the said John D. Levinson, from the payment of his just debts, and to save to him the consideration paid him, the said John D. Levinson, by this defendant for the goods in the said bill of complaint mentioned and as hereinafter referred to.

30 And this defendant, further answering, says, that he admits that on the ninth day of April, 1866, he purchased of the said John D. Levinson a large stock of clothing and dry goods at Chicago. And this defendant further says, that he hereto annexes the inventory and account of such clothing and dry goods as contained in the bill of sale thereof to this defendant, at the original

cost prices thereof, as given by the said John D. Levinson at the time, and the same is made a part of this defendant's answer, and marked Schedule A.

And this defendant, further answering, says, that he purchased and paid for the bill of goods, in schedule A contained, on the ninth day of April, 1866, of John D. Levinson, without notice of any defect in title thereto or of any claim or lien thereon by any person as a creditor of the said John D. Levinson, and without notice of any fraud practiced or intended by the said John D. Levinson upon any of his creditors, or of any fraudulent intent on the part of said John D. Levinson, or of any equity or claim of said complainants; the said purchase was so made by this defendant of said John D. Levinson fairly and in good faith, on the day aforesaid; that this defendant paid to the said John D. Levinson for the said goods a full
31 and fair consideration and value, to wit, the sum of nine thousand seven hundred and twenty-five dollars and ninety-five cents, in cash, at the time of such purchase and sale, and without notice, as hereinbefore set forth, at the time of such payment, and on the same day, took possession of and removed the said goods to his own place of deposit, and he now holds and claims the same and the proceeds and value thereof, as the bona fide purchaser thereof for value, without notice against the said complainants and all others.

And this defendant, further answering, says, that he denys that the said purchase and sale was made by him in collusion and fraud with the said John D. Levinson with the design to cheat the creditors of the said John D. Levinson, or that it was instigated by this defendant in any way; and this defendant denys that said Levinson sold said goods to this defendant with a view to forestall any action on the part of the complainants or any others the creditors of said John D. Levinson within the knowledge or information of this defendant; and this defendant further says, that he, this defendant, did not propose to buy said goods and remove them so as to prevent the
32 creditors of the said John D. Levinson from collecting their debts by process of law; and this defendant did not propose to said Levinson that he had better make such sale to him, this defendant, and put the money in his (Levinson's) pocket, and let his creditors go to the devil, nor did this defendant ever use any such words in substance or to that import or effect, and, on the contrary thereof, this defendant says and avers that the proposition that this defendant should buy said stock of goods was first proposed to this defendant by the said John D. Levinson, and afterwards repeatedly urged upon this defendant by said Levinson, after the repeated refusals of this defendant, and that this defendant was not even aware that the said Levinson had any creditors or owed any debts at all to any considerable extent, and at the time of the negotiation for and completion of said sale this defendant had no information that any such creditors had or were then making any claim upon the said John D. Levinson.

And this defendant, further answering, says, that he denys that before the said purchase and sale the said John D. Levinson showed to this defendant his bills of purchases of such goods, at three and

four months, or that he, said Levinson, showed to this defendant
33 any bill of purchases at that or any other time, but on the contrary thereof, when this defendant asked said Levinson for such bills or invoices, he, said Levinson, referred this defendant to the cost marks already put on to said goods, as the cost thereof; and this defendant denys that he told him, said Levinson, that he, this defendant, wished that his purchases had been larger, or anything to that effect, or that he, this defendant, before said purchase and sale, told said John D. Levinson that he had better take this defendant's offer, as his (said Levinson's) creditors were after him, or that he had better sell out to this defendant and put the money in his (said Levinson's) pocket, and let his creditors go to the devil, or that if said Levinson intended to do anything about it, he had better do it very quick, as there was a report about town about his selling out at less than cost, and some papers or attachments to take said goods, &c., or that on Saturday, the 7th day of April, 1866, this defendant further told the said John D. Levinson that if he waited until Monday he, this defendant, would be gone, and that if he, this defendant, purchased the goods he would remove them at once from the store, as, if he left them there, the creditors would replevy them certain, or anything in substance or to that effect, and, on the contrary thereof, this
34 defendant says that it is false and untrue in all its parts.

And this defendant further answering says, that he denys that the said sale was contrived, in collusion and fraud, to cheat and defraud said complainants or others, the creditors of the said John D. Levinson, to the knowledge of this defendant, or that this defendant contrived and conspired with the said Levinson to cheat and defraud said creditors, or that this defendant had said sale so made with the design and purpose of keeping said goods beyond the reach of execution, or that such sale was made to hinder, delay, and defraud creditors; but on the contrary thereof, said purchase and sale was, on the part of this defendant, in all respects fair and in good faith, as hereinafter more particularly mentioned.

And this defendant further answering says, that the circumstances of such purchase and sale, on the part of this defendant, were fully and truthfully as follows, viz:

This defendant came to Chicago early in January, 1866, from California, and brought from there twelve thousand dollars in gold, his earnings there, and his only fortune. He came to Chicago to recruit and see some relatives there, and with a view shortly to
35 embark in trade to increase his means and give him something to do. Soon after he came to Chicago, and in January, 1866, he met with John D. Levinson, whom he had slightly known in California; Levinson then proposed to him, this defendant, to buy him out, which this defendant, at that time, not feeling disposed to that kind of business, declined to consider. Some time after, and about the last of March, 1866, this defendant received word that Livinson wished to see him. This defendant accordingly called at the store of Levinson, on South Clark street, and Levinson then made to this defendant the offer, and urged on this defendant to buy him out at

sixty cents on the dollar upon the cost mark of his goods, consisting mostly of made-up clothing. This defendant again declined the offer, not feeling inclined to the clothing business; but after some days finding nothing else offering for the use of his means and time, this defendant laid the matter before David Adams, of Chicago, his brother-in-law, and himself a clothing merchant, and after consultation, this defendant and said Adams went together on Sunday the 25th March, to said Levinson's store for said Adams to examine and appraise the fair value of the stock, this defendant not feeling competent to judge of eastern and western prices on account of
36 about sixteen years' residence in California; after this defendant and said Adams had examined the goods, and were about to leave; Levinson asked this defendant to make up his mind and make an offer how much in the dollar he would give on cost price mark, and let him, said Levinson, know by the next day, because he expected another man to come and buy the goods if this defendant did not. This defendant then told him, said Leviuson, that he would answer him on Monday on Monday, March 26, 1866, this defendant, in pursuance of said request, went to said Levinson's store and there offered him the sum of fifty-five cents on the dollar for such stock of the cost price mark, at the same time telling him that if he could get more from any one else to take it. The said Levinson declined the offer, and this defendant left his store. On Friday, April 6th, 1866, as he this defendant was crossing Lake street, on Clark, in company with David Adams, said Levinson hailed this defendant from near his store door, and this defendant went to the store door; said Levinson then asked this defendant if he had made up his mind as to said trade; to which this defendant replied that he had offered him, said Levinson, fifty-five cents on the dollar as aforesaid, and he, this defendant, would give no more, and he, said Levinson might
37 take that or sell to somebody else; that that was all the said goods could be worth to this defendant, and that if he, this defendant, had not offered fifty-five cents, he would not now offer more than fifty cents, but that he did not wish to back out. The said Levinson then wanted this defendant to give him fifty-seven and a half per cent., which this defendant declined to do. The said Levinson then said: "Well you shall have them; I can take that money and put it to better use; I am sick of this business; I want to be in some business in which I will be occupied all day long doing something." The said Levinson then asked this defendant to come around the next Sunday, (April 8th,) and take an account of the stock, to which this defendant assented. On Sunday morning, April 8th, this defendant went to the store of said Levinson, in company with the said David Adams and David Witkowsky, junior, on his part; and with said Levinson and his clerk, an inventory and account of said stock, at the cost price mark, was made out of all such goods, the same being called off from the marks upon a card thereon, on nearly all the articles, and from Levinson's statement of cost as to a few, and set down in an account by said Levinson's clerk or himself, and also by said David Witkowsky, junior, for correc-

38 tion on another paper. The account kept by said Levinson and his clerk, being the one on which the bill of sale and receipt was made, the original of which is now produced here in contra, and a copy of which is schedule A, annexed to this answer. All the parties then left said Levinson's store with the understanding that this defendant should meet the said Levinson at his store the next morning to complete the trade, by this defendant taking possession of and removing said goods, and making the payment agreed upon. About nine o'clock the next morning, (April 9th,) this defendant went to said Levinson's store with six express waggons, and loaded in and removed said goods and stored them in the basement of No. 77 Lake street, the premises occupied by Conrad Witkowsky and David Witkowsky senior, a cousin of this defendant. This defendant then met the said Levinson in the store of the said David Witkowsky, senior, and at his desk paid to said Levinston (said David Witkowsky doing the business for and with this defendant) two thousand dollars in currency, and this defendant's check on the banking house of Henry Greenbusun & Co. for seven thousand seven hundred twenty-five dollars and ninety-five cents, which check
39 was, as defendant is informed and believes, paid on the next day. The said Levinson then had with him the said account and inventory of the said goods above referred to, of which schedule A is a copy, which he then handed as a bill of sale, and receipted to be given to this defendant. The said Witkowsky then told him he should not make it a receipt for the full amount of cost, but deduct the forty-five per cent. from the gross sum, so as to show what was actually paid, and the said Levinson then said it was not necessary, and would make no difference as it was a receipt in full, and that was all he needed.

And this defendant further answering says, that he denys that he took actual possession of said goods on Sunday the eighth day of April, 1866, or at all, until on Monday the ninth day of April, 1866, when the said trade was completed; and this defendant further denies that a pretended bill of sale in writing was made out and signed, in which was falsely expressed the full cost price or value of said goods, instead of the real or pretended consideration; but this defendant alleges that the whole truth of the transaction is as stated above in that behalf; and this defendant denies that he, this
40 defendant, said that he, this defendant, wanted it done in this way, (the way it was done,) so that when the New York creditors came he could show them that he had paid for the goods, dollar for dollar, or any thing to that substance or effect, or that he was in any manner instrumental in having the receipt signed in that form, or in any manner assented to it, reference being had to the above statement of the actual facts relating to it; and he further says, that the amount he was paying in fact was well known, and notorious among the parties cognizant of the transaction, David Witkowsky, senior, David Adams, and David Witkowsky, junior, and others, and no concealment was made in regard to that or any other circumstance of said sale and purchase.

And this defendant further answering says, that he denies that the sum of nine thousand seven hundred and twenty-five dollars and ninety-five cents, or fifty-five per cent. upon the cost price mark of the said goods, was an inadequate consideration for the said beforementioned stock of goods, bought for cash, as a whole, for the purposes of trade, but on the contrary thereof, this defendant alleges and charges the truth to be, that the said price was a full and ample consideration, and all that said goods were worth; and all
41 that this defendant or any other trader could afford, considering the nature of the stock, and the then state and probable state of the market to pay for the same for the purposes of trade, and on a cash purchase, no credit being asked for from the vendor; that this defendant was informed, and now believes that said Levinson had been in said business near one year; that he commenced with purchasing an old stock; that many of said goods being made-up clothing, had become out of date and unsalable; that many others had been purchased at the high prices of the last year; that the market for such goods had fallen seriously, and was still falling with the fall of the price of gold, and the general readjustment of values going on in the country, so as to depreciate the retail prices at which such goods could be sold; that having reference to these facts, and the fair profits which every merchant is expected to reap for his expenses, capital, and time, this defendant did not regard, and does not now regard the said good worth more than the price given for them for any purposes of legitimate trade.

And this defendant further says that from the beginning of said negotiation to and until the final completion of the same by
42 the removal of said goods, and the payment of the purchase money, no single word was spoken between this defendant and said John D. Levinson, in regard to any creditors of said Levinson; that this defendant never heard, at the time, that any creditors of the said Levinson were pressing him, or that any debts were overdue and unpaid by said Levinson, and this defendant is now informed and verily believes that there were, at that time, no debts of any considerable amount, and mone of any importance then due by said Levinson, and matured and unpaid, and that no creditors were following him at the time, and no suits had been commenced, or were then threatened against him, said Levinson.

And this defendant, further answering, says that he knows nothing about the present property or means of the said John D. Levinson, except that this defendant, on the ninth day of April, 1866, paid him the sum of nine thousand seven hundred and twenty-five dollars and ninety-five cents, which it was his duty to apply to the payment of his debts. And further, this defendant insists, as matter of equity, that the said complainants and other creditors should follow and exhaust the said fund in the hands of the said John D. Levinson instead of wrongfully and inequitably seeking to charge the
43 said debts upon the goods in the hands of this defendant, bought from the said Levinson in good faith, and for which a full consideration has been actually paid.

And this defendant, further answering, says that he purchased the said stock of goods with the fair and honest intention to go into business at some place outside of Chicago; that he accordingly, in pursuance of his original plan, at the time the subpœna in this case was served upon him, had made arrangements for opening a store in Quincy, Illinois, for the sale of these and such like goods, and had hired, and now has on his hands, under engagement and pay, two clerks at a considerable salery.

And this defendant further says, that these unfounded and collusive proceedings of the said complainants and the said John D. Levinson are disastrous and ruinous to this defendant in the consequent expenses and delays, and this defendant does verily believe are intended and designed to extort from this defendant some sort of yielding to the wrongful claims of the said complainants.

And this defendant, further answering, says that all of the parties above named, as well as this defendant, are Jews, and do not keep the Christian Sunday as a Sabbath, and it was at the special request of said Levinson that Sunday was selected for the taking
44 of the account of said stock, as he then said, that he might not lose a day in his business; and that it is usual and customary amongst the Jews to transact all secular business on that day.

And this defendant, further answering, says that the said John D. Levinson, at the time of the said negotiation, informed this defendant that a bonus of six hundred dollars on his lease had been offered him for the rent of his store, and if this defendant purchased said goods, the same must be immediately removed; nor did this defendant himself wish to pay rent for the deposit of said goods in said store, so occupied by said Levinson.

And this defendant denies all unlawful combination and confederacy in the said bill charged, without this, that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges, in that behalf most wrongfully sustained.

ISAAC KEMPNER.

45 GOODWIN, LARNED & GOODWIN,
*Sol'rs & of Counsel for Def't, Isaac Kempner.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Isaac Kempner, of Chicago, in said district, being duly sworn, deposes and says that he has heard the foregoing answer, signed by him, read; that he knows the contents thereof, and that the same is true of his own knowledge, except such matters as are therein stated upon information and belief; and as to those matters, he believes the same to be true.

ISAAC KEMPNER.

Subscribed and sworn to this 30 day of April, A. D. 1866, before me. WM. H. BRADLEY, *Cl'k.*

46 *Schedule A, annexed to answer of Isaac Kempner.*

CHICAGO, *April* 9, 1866.

Mr. Isaac Kempner

Bought of J. D. Levinson.

| | | | | |
|---|---|---|---|---|
| 2 | pr. pants, | @ | $9 50 | $19 00 |
| 2 | " | " | 10 00 | 20 00 |
| 1 | " | " | 9 50 | 9 50 |
| 3 | " | " | 12 00 | 36 00 |
| 12 | " | " | 9 00 | 108 00 |
| 12 | " | " | 10 00 | 120 00 |
| 3 | " | " | 10 50 | 31 50 |
| 12 | " | " | 9 50 | 114 00 |
| 11 | " | " | 10 25 | 112 75 |
| 11 | " | " | 10 00 | 110 00 |
| 12 | " | " | 8 50 | 102 00 |
| 12 | " | " | 9 50 | 114 00 |
| 11 | " | " | 9 50 | 104 50 |
| 10 | " | " | 7 50 | 75 00 |
| 2 | " | " | 18 50 | 17 00 |
| 3 | " | " | 10 00 | 30 00 |
| 2 | " | " | 10 00 | 20 00 |
| 6 | " | " | 9 00 | 54 00 |
| 12 | " | " | 10 25 | 123 00 |
| 12 | " | " | 7 00 | 84 00 |
| 12 | " | " | 9 00 | 108 00 |
| 2 | " | " | 11 25 | 22 50 |
| 5 | " | " | 7 50 | 37 00 |
| 3 | " | " | 10 00 | 30 00 |
| 9 | " | " | 7 00 | 63 00 |
| 47 1 | " | " | 7 50 | 7 50 |
| 2 | " | " | 9 50 | 19 00 |
| 5 | " | " | 10 00 | 50 00 |
| 2 | " | " | 8 00 | 16 00 |
| 2 | " | " | 8 00 | 16 00 |
| 3 | " | " | 10 00 | 30 00 |
| 2 | " | " | 10 50 | 21 00 |
| | | | | $1,824 75 |
| 9 | " | " | 6 00 | 54 00 |
| 2 | " | " | 8 50 | 17 00 |
| 2 | " | " | 7 00 | 14 00 |
| 3 | " | " | 8 00 | 24 00 |
| 3 | " | " | 7 50 | 22 50 |
| 3 | " | " | 7 00 | 21 00 |
| 3 | " | " | 10 00 | 30 00 |
| 10 | " | " | 6 50 | 65 00 |
| 2 | " | " | 4 00 | 8 00 |
| 4 | " | " | 7 50 | 30 00 |
| 3 | vests, | @ | $3 50 | 10 50 |
| 6 | " | " | 3 50 | 21 00 |
| 3 | " | " | 3 00 | 9 00 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 1 | vests, | @ | $3 50 | $3 50 | |
| | 4 | " | " | 2 75 | 11 00 | |
| | 4 | " | " | 3 00 | 12 00 | |
| | 3 | " | " | 3 50 | 10 50 | |
| | 4 | " | " | 4 25 | 17 00 | |
| | 6 | " | " | 2 75 | 16 50 | |
| 48 | 1 | " | " | 4 00 | 4 00 | |
| | 2 | " | " | 5 00 | 10 00 | |
| | 1 | " | " | 3 50 | 3 50 | |
| | 1 | " | " | 4 00 | 4 00 | |
| | 3 | " | " | 4 00 | 12 00 | |
| | 4 | " | " | 3 50 | 14 00 | |
| | 1 | " | " | 4 50 | 4 50 | |
| | 2 | " | " | 3 00 | 6 00 | |
| | 2 | " | " | 4 00 | 8 00 | |
| | 2 | " | " | 2 75 | 5 50 | |
| | 1 | " | " | 4 50 | 4 50 | |
| | 1 | " | " | 5 00 | 5 00 | |
| | 2 | " | " | 4 50 | 9 00 | |
| | 1 | " | " | 5 00 | 5 00 | |
| | 2 | " | " | 5 00 | 10 00 | |
| | 2 | " | " | 3 00 | 6 00 | |
| | | | | | | $2,332 25 |
| | 1 | " | " | 4 50 | 4 50 | |
| | 1 | " | " | 4 00 | 4 00 | |
| | 11 | " | " | 3 50 | 38 50 | |
| | 8 | " | " | 3 50 | 28 00 | |
| | 8 | " | " | 3 00 | 24 00 | |
| | 1 | " | " | 5 00 | 5 00 | |
| | 2 | " | " | 4 00 | 8 00 | |
| | 1 | " | " | 5 00 | 5 00 | |
| | 1 | " | " | 4 50 | 4 50 | |
| | 3 | " | " | 3 50 | 16 50 | |
| | 12 | " | " | 3 50 | 42 00 | |
| | 12 | " | " | 4 00 | 48 05 | |
| | 5 | " | " | 5 00 | 25 00 | |
| 49 | 14 | " | " | 3 50 | 49 00 | |
| | 12 | " | " | 4 25 | 51 00 | |
| | 9 | " | " | 3 00 | 27 00 | |
| | 11 | " | " | 4 25 | 46 75 | |
| | 6 | " | " | 4 00 | 24 00 | |
| | 6 | " | " | 4 25 | 25 50 | |
| | 12 | " | " | 3 00 | 36 00 | |
| | 6 | " | " | 4 00 | 24 00 | |
| | 6 | " | " | 4 25 | 25 00 | |
| | 6 | suits, | @ | 26 00 | 156 00 | |
| | 12 | " | " | 17 00 | 204 00 | |
| | 12 | " | " | 13 00 | 156 00 | |
| | 6 | " | " | 26 00 | 156 00 | |
| | 6 | " | " | 36 00 | 216 00 | |

| | | | | | |
|---|---|---|---|---|---|
| | 9 coats, @ | $16 00 | $144 00 | | |
| | 6 " " | 15 25 | 91 50 | | |
| | 5 " " | 18 00 | 90 00 | | |
| | 5 pr. pants, @ | 9 75 | 48 75 | | |
| | 6 " " " | 10 00 | 60 00 | | |
| | | | | | $4,216 25 |
| | 5 vests, @ | 3 00 | 15 00 | | |
| | 5 pr. pants, @ | 7 00 | 35 00 | | |
| | 12 " " " | 10 25 | 123 00 | | |
| | 12 " " " | 2 50 | 30 00 | | |
| | 12 " " " | 6 00 | 72 00 | | |
| | 6 vests, @ " | 3 00 | 18 00 | | |
| | 6 pr. pants, @ | 8 00 | 48 00 | | |
| | 6 vests, @ | 4 00 | 24 00 | | |
| | 6 pr. pants, @ | 9 00 | 57 00 | | |
| 50 | 6 pair pants and vests, @ | 11 00 | 66 00 | | |
| | 5 vests, | " 3 50 | 17 50 | | |
| | 5 pr. pants, | " 9 00 | 45 00 | | |
| | 6 vests, | " 3 25 | 19 50 | | |
| | 6 pants, | " 7 00 | 42 00 | | |
| | 12 vests, | " 3 75 | 45 00 | | |
| | 12 pants, | " 9 25 | 111 00 | | |
| | 12 vests, | " 3 00 | 36 00 | | |
| | 8 vests, | " 3 25 | 26 00 | | |
| | 6 vests, | " 4 00 | 24 00 | | |
| | 4 " | " 4 00 | 16 00 | | |
| | 4 pants, | " 10 00 | 40 00 | | |
| | 12 " | " 9 00 | 108 00 | | |
| | 12 linen coats | " 3 75 | 45 00 | | |
| | 12 " " | " 3 00 | 36 00 | | |
| | 12 " " | " 2 75 | 33 00 | | |
| | 12 " " | " 3 50 | 42 00 | | |
| | 17 " " | " 3 00 | 51 00 | | |
| | 7 vests, | " 3 00 | 21 00 | | |
| | 7 pants, | " 8 00 | 56 00 | | |
| | 12 vests, | " 3 00 | 36 00 | | |
| | 3 pants, | " 7 50 | 22 50 | | |
| | 8 " | " 8 50 | 68 00 | | |
| | 1 " | " 7 50 | 7 50 | | |
| | 1 " | " 10 50 | 10 50 | | |
| | 12 vests, | " 3 00 | 36 00 | | |
| | | | | | $5,698 75 |
| 51 | 12 pr. pants, @ | 9 00 | 108 00 | | |
| | 12 blouses, " | 9 75 | 117 00 | | |
| | 4 coats, " | 12 00 | 48 00 | | |
| | 4 " " | 6 00 | 24 00 | | |
| | 6 " " | 12 00 | 72 00 | | |
| | 8 " " | 15 50 | 124 00 | | |
| | 8 overcoats, " | 32 00 | 256 00 | | |
| | 1 " " | 37 50 | 37 50 | | |

| | | | | | |
|---|---|---|---|---|---|
| | 1 overcoats, | @ | $45 00 | $45 00 | |
| | 1 " | " | 35 00 | 35 00 | |
| | 1 " | " | 24 50 | 24 50 | |
| | 1 " | " | 18 00 | 18 00 | |
| | 1 " | " | 18 00 | 18 00 | |
| | 1 " | " | 28 00 | 28 00 | |
| | 1 " | " | 24 50 | 24 50 | |
| | 1 " | " | 32 50 | 32 50 | |
| | 1 " | " | 16 00 | 16 00 | |
| | 3 coats, | " | 16 50 | 49 50 | |
| | 6 " | " | 18 00 | 108 00 | |
| | 3 " | " | 16 00 | 48 00 | |
| | 2 " | " | 18 00 | 36 00 | |
| | 2 " | " | 12 50 | 25 00 | |
| | 2 " | " | 12 50 | 25 00 | |
| | 3 " | " | 7 25 | 21 75 | |
| | 2 " | " | 16 00 | 32 00 | |
| | 4 " | " | 12 50 | 50 00 | |
| | 4 " | " | 9 75 | 39 00 | |
| 52 | 5 " | " | 13 00 | 65 00 | |
| | 5 " | " | 14 00 | 70 00 | |
| | 9 " | " | 12 00 | 108 00 | |
| | 1 " | " | 22 50 | 22 50 | |
| | | | | | $7,426 50 |
| | 1 coat, | @ | 16 00 | 16 00 | |
| | 1 " | " | 14 50 | 14 50 | |
| | 4 " | " | 17 00 | 68 00 | |
| | 5 " | " | 14 00 | 70 00 | |
| | 3 " | " | 14 00 | 42 00 | |
| | 7 " | " | 11 50 | 80 50 | |
| | 1 " | " | 16 00 | 16 00 | |
| | 1 " | " | 11 00 | 11 00 | |
| | 10 " | " | 15 00 | 150 00 | |
| | 6 fur coats, | " | 16 50 | 99 00 | |
| | 12 pants, | " | 12 00 | 144 00 | |
| | 5 " | " | 8 75 | 43 75 | |
| | 1 coats, | " | 32 50 | 32 50 | |
| | 4 vests, | " | 4 50 | 18 00 | |
| | 6 pants, | " | 8 75 | 52 50 | |
| | 4 " | " | 8 75 | 35 00 | |
| | 3 " | " | 8 75 | 26 25 | |
| | 6 " | " | 8 50 | 51 00 | |
| | 12 " | " | 8 75 | 105 00 | |
| | 12 " | " | 9 00 | 108 00 | |
| | 3 " | " | 8 50 | 25 50 | |
| | 8 coats, | " | 17 00 | 136 00 | |
| 53 | 2 " | " | 32 00 | 65 00 | |
| | 12 " | " | 22 00 | 264 00 | |
| | 12 " | " | 27 00 | 324 00 | |
| | 6 vests, | @ | 5 25 | 31 50 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 7 | vests, | @ | $6 00 | | $42 00 | |
| 1 | " | " | 4 37 | | 4 37 | |
| 3 | " | " | 6 00 | | 18 00 | |
| 1 | " | " | 6 00 | | 6 00 | |
| 3 | " | " | 6 00 | | 18 09 | |
| 2 | " | " | 7 50 | | 15 00 | |
| 1 | " | " | 6 25 | | 6 25 | |
| 1 | " | " | 5 00 | | 5 00 | |
| 7 | " | " | 2 75 | | 19 25 | |
| | | | | | | $9,589 37 |
| 2 | vests, | @ | 3 00 | | 6 00 | |
| 12 | " | " | 3 25 | | 39 00 | |
| 12 | " | " | 3 00 | | 36 00 | |
| 12 | " | " | 5 25 | | 63 00 | |
| 6 | " | " | 5 00 | | 30 00 | |
| 5 | pr. pants, | @ | 12 00 | | 60 00 | |
| 5 | " | " | " | 4 25 | 21 25 | |
| 4 | vests, | | " | 12 50 | 50 00 | |
| 6 | " | | " | 4 00 | 24 00 | |
| 6 | vest patterns, | @ | 4 00 | | 24 00 | |
| 1 | " | " | " | 5 50 | 5 50 | |
| 1 | " | " | " | 6 00 | 6 00 | |
| 1 | " | " | " | 6 00 | 6 00 | |
| 54 1 | " | " | " | 5 50 | 5 50 | |
| 1 | " | " | " | 6 00 | 6 00 | |
| 1 | " | " | " | 6 00 | 6 00 | |
| 4 | " | " | " | 4 37½ | 17 50 | |
| 2 | " | " | " | 3 75 | 7 50 | |
| 4 | " | " | " | 5 50 | 22 00 | |
| 1 | P. C. cass. | @ | 20½ yds., | @ 2 25 | 45 56 | |
| 1 | " | " | 16 | " " 2 75 | 44 00 | |
| 1 | " | " | 21½ | " " 2 25 | 48 37 | |
| 1 | " | " | 5 | " " 6 50 | 32 50 | |
| 1 | " | " | 10¾ | " " 2 25 | 24 88 | |
| 1 | " | " | 3¼ | " " 3 75 | 12 19 | |
| 1 | " | " | 7½ | " " 3 75 | 28 12 | |
| 1 | " | " | 9¼ | " " 7 00 | 4 75 | |
| 1 | " | " | 10 | " " 7 00 | 70 00 | |
| 1 | " | " | 10 | " " 3 75 | 37 50 | |
| 1 | " | " | 10 | " " 7 00 | 70 00 | |
| 1 | " | " | 1¾ | " " 7 50 | 13 13 | |
| | | | | | | $10,514 92 |
| 1 | P. C. cass. | (c't'ng.) | 8½ yds., | @ 7 50 | 63 75 | |
| 1 | " | " | 6¼ | " " 7 50 | 50 62 | |
| 1 | " | " | 18 | " " 7 50 | 142 50 | |
| 1 | " | " | 28 | " " 2 25 | 63 00 | |
| 1 | " | " | 4 | " " 2 25 | 9 00 | |
| 1 | " | " | 12¾ | " " 2 75 | 35 05 | |
| 1 | " | " | 13⅝ | " " 6 00 | 81 75 | |
| 1 | " | " | 31¼ | " " 2 00 | 62 50 | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 55 | 1 | P. C. cass. (c't'ng.) | 33⅓ | yds., | @ | $2 00 — | $67 00 | |
| | 1 | " " " | 26¼ | " | " | 2 25 .. | 59 00 | |
| | 1 | " " " | 21½ | " | " | 2 25 .. | 48 37 | |
| | 1 | " " " | 15½ | " | " | 6 50 .. | 100 75 | |
| | 1 | " " " | 14 | " | " | 6 50 .. | 91 00 | |
| | 1 | " " " | 14 | " | " | 6 50 .. | 91 00 | |
| | 1 | " " " | 15⅛ | " | " | 6 50 .. | 98 37 | |
| | 1 | " " " | 14¼ | " | " | 6 50 .. | 92 62 | |
| | 1 | " " " | 19¼ | " | " | 6 50 .. | 125 12 | |
| | 1 | " " " | 12⅝ | " | " | 6 50 .. | 82 06 | |
| | 1 | " " " | 8¾ | " | " | 6 50 .. | 56 87 | |
| | 1 | " " " | 2⅝ | " | " | 8 50 .. | 22 31 | |
| | 1 | " " " | 2½ | " | " | 2 50 .. | 6 25 | |
| | 1 | " " " | 2½ | " | " | 3 00 .. | 7 50 | |
| | 1 | " " " | 1½ | " | " | 7 50 .. | 11 25 | |
| | 1 | " " " | 5 | " | " | 3 25 .. | 16 25 | |
| | 1 | " " " | 1⅞ | " | " | 8 50 .. | 19 94 | |
| | 1 | " " " | 13¾ | " | " | 6 50 .. | 89 37 | |
| | 1 | " " " | 26 | " | " | 10 00 .. | 260 00 | |
| | 1 | " " " | 25¼ | " | " | 7 00 .. | 176 75 | |
| | 1 | " " " | 4 | " | " | 7 00 .. | 28 00 | |
| | 1 | " " " | 14 | " | " | 6 50 .. | 91 00 | |
| | 1 | " " " | 23¼ | " | " | 8 00 .. | 186 00 | |
| | 1 | " " " | 41 | " | " | 8 25 .. | 330 25 | |
| | 1 | farm's satin, | 36 | yds., | @ | 1 75 ..... | 63 00 | |
| | 1 | " " | 42 | " | " | 1 63 ..... | 68 46 | |
| | 1 | " " | 46½ | " | " | 1 60 ..... | 74 00 | |
| | | | | | | | | $13,385 58 |
| 56 | 31 | yds. farmers' satin, | | | @ | 1 60 ..... | 49 60 | |
| | 53½ | " " " | | | " | 50 ..... | 26 75 | |
| | 52½ | " " " | | | " | 1 00 ..... | 52 50 | |
| | 44½ | " brown holland, | | | " | 43 ..... | 19 13 | |
| | 3¾ | " " " | | | " | 56 ..... | 2 10 | |
| | 2 | " " " | | | " | 28 ..... | 56 | |
| | 6 | " " " | | | " | 30 ..... | 1 80 | |
| | 41½ | " hair cloth, | | | " | 60 ..... | 24 90 | |
| | 47 | " " | | | " | 2 50 ..... | 117 50 | |
| | 100½ | " " | | | " | 38 ..... | 38 19 | |
| | 10 | " padding, | | | " | 35 ..... | 3 50 | |
| | 20 | " " | | | " | 90 ..... | 18 00 | |
| | 33 | " linen, | | | " | 48 ..... | 15 84 | |
| | 30 | " " | | | " | 37½ ..... | 11 25 | |
| | 34 | " " | | | " | 53 ..... | 18 02 | |
| | 50 | " " | | | " | 1 50 ..... | 75 00 | |
| | 21 | doz. neck ties, | | | " | 2 50 ..... | 52 50 | |
| | 6 | " " | | | " | 3 00 ..... | 18 00 | |
| | 6 | " " | | | " | 2 00 ..... | 12 00 | |
| | 4½ | " " | | | " | 2 50 ..... | 11 25 | |
| | 3¼ | " " | | | " | 7 50 ..... | 5 62 | |
| | 2 | " " | | | " | 5 00 ..... | 10 00 | |

| | | | | | |
|---|---|---|---|---|---|
| | 2 | dozen neck ties, | @ $4 00 | $8 00 | |
| | 5 | " " | " 5 00 | 25 00 | |
| | 2 | " " | " 4 75 | 9 50 | |
| | 2¾ | " " | " 5 00 | 13 75 | |
| | 1 | " " | " 10 00 | 10 00 | |
| 57 | 10 | " " | " 2 50 | 25 00 | |
| | 1 | " " | " 7 50 | 7 50 | |
| | 2 | " " | " 5 00 | 10 00 | |
| | 2 | " " | " 4 75 | 9 50 | |
| | | | | | $14,087 84 |
| | 3 | doz. neck ties, | " 6 00 | 18 00 | |
| | 2 | " " | " 5 00 | 10 00 | |
| | 2 | " " | " 3 50 | 7 00 | |
| | 2 | " " | " 2 50 | 5 00 | |
| | 1 | " " | " 6 00 | 6 00 | |
| | 1 | " " | " 4 00 | 4 00 | |
| | 1¼ | " " | " 6 00 | 7 50 | |
| | ¾ | " " | " 11 00 | 8 25 | |
| | 1 | " " | " 8 00 | 8 00 | |
| | 1 | " scarfs, | " 18 00 | 18 00 | |
| | 1 | " " | " 24 00 | 24 00 | |
| | 1 | " " | " 30 00 | 30 00 | |
| | 2 | " " | " 12 00 | 24 00 | |
| | 7 | " " | " 2 00 | 14 00 | |
| | 7 | " " | " 1 00 | 7 00 | |
| | 8 | " hdkffs, | " 2 00 | 16 00 | |
| | 12 | " pins, | " 1 00 | 12 00 | |
| | 2 | " " | " 1 00 | 2 00 | |
| | ¾ | " overshirts, | " 21 00 | 15 75 | |
| | 1 | suit, @ 45 00 | | 45 00 | |
| | 1 | vest, " 6 00 | | 6 00 | |
| | 2 | coats, " 30 00 | | 60 00 | |
| 58 | 197 | boxes collars, @ 28 | | 55 16 | |
| | 6 | doz. undershirts | " 18 00 | 108 00 | |
| | | " " | " 15 00 | 90 00 | |
| | 1 | " linen drawers, | " 26 00 | 26 00 | |
| | 9 | " shirts and | " " 16 00 | 144 00 | |
| | 2⅔ | " " " | " 21 00 | 56 00 | |
| | ⅙ | " shirts, | " 32 00 | 5 32 | |
| | ½ | " " | " 18 00 | 9 00 | |
| | ⅓ | " " | " 32 00 | 10 66 | |
| | ¾ | " " | " 19 50 | 14 62 | |
| | 1 | " hose, | " 12 00 | 12 00 | |
| | 1½ | " shirts, | " 18 00 | 27 00 | |
| | 2 | " bleach'd drawers, | @ 15 00 | 30 00 | |
| | | | | | $15,023 10 |
| | ⅓ | doz. white shirts, | @ 30 00 | 10 00 | |
| | ½ | " " | " 32 00 | 16 00 | |
| | 1 | " " | " 28 50 | 28 50 | |
| | 3 | " " | " 30 00 | 90 00 | |

| | | | | | |
|---|---|---|---|---|---|
| | 3 | doz. white shirts, @ | $33 50 | $100 50 | |
| | 1½ | " " " | 33 50 | 50 25 | |
| | 3 | " " " | 34 00 | 102 00 | |
| | 2 | " " " | 36 00 | 72 00 | |
| | 2 | " " " | 30 00 | 60 00 | |
| | ½ | " " " | 33 00 | 16 50 | |
| | 2 | " " " | 25 00 | 50 00 | |
| | 3 | " " " | 27 00 | 81 00 | |
| | 2 | " " " | 28 50 | 57 00 | |
| 59 | 3 | " " " | 22 50 | 67 50 | |
| | 2 | " " " | 31 50 | 63 00 | |
| | 2 | " " " | 33 00 | 66 00 | |
| | 4½ | " " " | 32 00 | 144 00 | |
| | ¼ | " undershirts, " | 15 00 | 3 75 | |
| | 3¼ | " " " | 12 50 | 9 37 | |
| | 10½ | " " " | 13 50 | 11 25 | |
| | 7⅓ | " " " | 12 00 | 7 30 | |
| | 7½ | " " " | 12 50 | 7 30 | |
| | 1½ | " shirts, " | 12 00 | 1 00 | |
| | 6 | boxes silk handk'fs, @ | 11 00 | 66 00 | |
| | 1 | doz. " " | " 14 00 | 14 00 | |
| | ¾ | " gloves, | " 8 00 | 6 00 | |
| | 7½ | doz. " | " 25 00 | 14 58 | |
| | 8 | pr. gloves, | " 1 00 | 8 00 | |
| | 1 | doz. " | " 17 00 | 17 00 | |
| | 1 | " " | " 12 00 | 12 00 | |
| | 1 | piece silk h'd'k'fs, | " 7 00 | 7 00 | |
| | | | | | $16,281 90 |
| | 7½ | doz. gloves, | " 17 00 | 9 91 | |
| | 10 | pr. " | " 12 00 | 10 00 | |
| | 1 | doz. " | " 8 00 | 8 00 | |
| | 1 | " " | " 17 00 | 17 00 | |
| | 3⅓ | " " | " 18 00 | 18 00 | |
| | 2 | " " | " 12 00 | 24 00 | |
| | 1 | " " | " 16 50 | 16 50 | |
| | 5/12 | " " | " 4 50 | 1 88 | |
| 60 | 7/22 | " " | " 6 00 | 3 50 | |
| | 18 | " collars, | " 1 75 | 31 50 | |
| | 14 | shirts, | " 2 25 | 31 50 | |
| | 1¼ | doz. suspenders, | " 36 00 | 45 00 | |
| | 9 | " " | " 6 50 | 58 50 | |
| | 3 | " " | " 7 50 | 22 50 | |
| | 6 | " " | " 9 00 | 54 00 | |
| | 2 | " " | " 5 00 | 10 00 | |
| | 4 | " " | " 7 50 | 30 00 | |
| | 1 | " " | " 11 50 | 11 50 | |
| | 1 | " " | " 10 00 | 10 00 | |
| | 5 | pair " | " 37½ | 1 88 | |
| | 1 | doz. scarfs, | " 4 00 | 4 00 | |
| | 1 | " " | " 5 00 | 5 00 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 1 | doz. | scarfs | @ | $6 00..... | $6 00 |
| | 10/12 | " | " | " | 7 50..... | 6 25 |
| | 1/2 | " | " | " | 6 00..... | 3 00 |
| | 3/4 | " | " | " | 5 00..... | 3 75 |
| | 1/4 | " | " | " | 9 00..... | 2 25 |
| | 2/3 | " | " | " | 18 00..... | 12 00 |
| | 1 | scarf, | " | " | 1 00..... | 1 00 |
| | 8 | shirts, | " | " | 1 50..... | 12 00 |
| | 4 | doz. | socks, | " | 2 50..... | 10 00 |
| | 10 | " | " | " | 3 00..... | 30 00 |
| | 5 | " | " | " | 2 25..... | 11 25 |
| | 3 | " | " | " | 5 50..... | 16 50 |
| | | | | | | $16,862 14 |
| 61 | 2 | doz. | shirts, | @ | 4 00..... | 8 00 |
| | 1 | " | " | " | 2 50..... | 2 50 |
| | 3 | " | " | " | 4 50..... | 13 50 |
| | 3 | " | " | " | 4 50..... | 13 50 |
| | 6 | " | " | " | 2 87½..... | 17 25 |
| | 2 | " | " | " | 3 00..... | 6 00 |
| | 6 | " | " | " | 2 50..... | 15 00 |
| | 20 | " | " | " | 2 62½..... | 52 50 |
| | 10 | " | " | " | 6 25..... | 62 50 |
| | 6 | " | " | " | 6 50..... | 39 00 |
| | 5 | " | " | " | 2 75..... | 13 75 |
| | 11/12 | " | " | " | 9 00..... | 8 25 |
| | 1 1/12 | " | drawers, | " | 27 00..... | 24 75 |
| | 10/12 | " | " | " | 32 00..... | 26 66 |
| | 1 1/12 | " | " | " | 28 50..... | 42 75 |
| | 1 | shirt, | | " | 2 50..... | 2 50 |
| | 8/12 | doz. | undershirts, | " | 27 00..... | 18 00 |
| | 1 | " | " | " | 30 00..... | 30 80 |
| | 11/12 | " | " | " | 27 00..... | 24 75 |
| | 1 | " | " | " | 27 00..... | 27 00 |
| | 1/3 | " | " | " | 30 00..... | 10 00 |
| | 2/3 | " | " | " | 30 00..... | 20 00 |
| | 10/12 | " | " | " | 30 00..... | 25 00 |
| | 5/12 | " | socks, | " | 5 00..... | 2 08 |
| | 3 | " | " | " | 6 50..... | 19 50 |
| 62 | 6½ | " | " | " | 9 75..... | 63 37 |
| | 1¾ | " | " | " | 9 00..... | 15 75 |
| | 3¾ | " | " | " | 8 00..... | 30 00 |
| | 1 | " | scarfs, | " | 7 50..... | 7 50 |
| | ½ | " | " | " | 9 50..... | 4 50 |
| | 1½ | " | handkfs., | " | 3 75..... | 5 63 |
| | 1 | " | ties, | " | 12 00..... | 12 00 |
| | 1 | " | handkfs., | " | 3 50..... | 3 50 |
| | | | | | | $117,529 13 |
| | 11/12 | doz. | handkfs., | " | 3 50..... | 3 22 |
| | 4 | " | " | " | 6 00..... | 24 00 |
| | 1 | " | " | " | 12 00..... | 12 00 |

| | | | | | |
|---|---|---|---|---|---|
| 2 | doz. | handkfs., | @ $8 50..... | $17 00 | |
| 1 | " | " | " 10 00..... | 10 00 | |
| 1⅓ | " | " | " 7 50..... | 10 00 | |
| 1 | " | " | " 10 50..... | 10 50 | |
| 5⅓ | " | pins, | " 6 00..... | 33 50 | |
| 2 | " | " | " 2 50..... | 5 50 | |
| 19 | " | umbrellas, | " 1 50..... | 28 50 | |
| | | | | | $17,682 85 |

Rec'd payment.

J. D. LEVINSON.

Endorsed: Filed May 5, 1866. Wm. H. Bradley, cl'k.

On this day, to wit, the fifth day of May, A. D. 1866, comes
62½ said defendant, Isaac Kempner, impl'd, and by his solicitors, and file herein his motion to dissolve and set aside the order in this cause, entered April 18th, 1866, to restrain the removal of goods, &c., which motion is in the words and figures following to wit:

Cir. C't U. S., N. D. Ill., in chancery.

*Motion to dissolve temporary injunction.*

ISAAC KEMPNER, impl'd, &c., *ads.* CHARLES B. CHURCHILL *et al.*

And now comes the said Isaac Kempner, and upon the bill of complaint and the records therein referred to the answer of defendant, Kempner, and affidavits filed therewith, moved the court to dissolve and set aside the order in this cause entered April 18th, 1866, to restrain the removal of the goods mentioned in the bill.

Dated May 5, 1866.

GOODWIN, LARNED & GOODWIN
*Sol'r for Isaac Kempner.*

Indorsed: Filed May 5, 1866. Wm. H. Bradley Cl'k.

On this 23d day of May, A. D. 1866, John D. Levinson,
63 by his solicitors, filed his answer in said cause, as follows, to wit:

Circuit Court of the United States for the northern district of Illinois.

*Answer of Jno. D. Levinson.*

The several answer of John D. Levinson, one of the defendants, to the bill of complaint of Charles B. Churchill and Leonard K. Smith, and Lewis Friedlander, Julius Stich, and Leopold Lithoner, complainants.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto, saith that he admits that

complainants, Churchill and Smith, did recover judgment against him for eleven hundred and forty-eight dollars, damages and the costs of court, as in said bill alleged.

This defendant, further answering, saith that he admits that the complainants, Lewis Friedlander, Julius Stich, and Leopold Lithoner, did recover judgment against him in the sum of three thousand and forty-six dollars for damages and the costs of the court, as is in said bill alledged.

This deponent, further answering, saith that said judgments,
64 and each of them, so recovered as aforesaid, remain in full force, and effect, and still remain unpaid and unsatisfied, as is in said bill alledged.

This defendant, further answering, admits that said writs, and each of them, were issued, and that said writs were returned wholly unsatisfied, as is in said bill alledged.

This defendant, further answering, admits that there is now actually and equitably due upon the aforesaid judgments the sum of eleven hundred and seventy dollars and twenty-five cents to said complainants, Churchill and Smith, and three thousand sixty-seven dollars and twenty-five cents to said complainants, Friedlander, Stich, and Lithoner, together with interest thereon, as in said bill alledged.

This defendant, further answering, admits said judgments were recovered by said complainants upon an indebtedness accrued in their favor against the defendant by the purchase of complainants of large amounts of dry goods, stock, wares, and merchandise, as is in
65 said bill alledged.

This defendant, further answering, saith that he admits that on or about the 15th day of March, 1866, he did then make divers and sundry large purchases of dry-goods, wares, merchandise, of divers mercantile firms in said city of New York, amounting in the aggregate to the sum of about eleven thousand seven hundred dollars, in which sums were included purchases made of complainants, Churchill and Smith, and that a previous indebtedness existed in favor of said complainants, Friedlander, Stich and Lithoner for merchandise purchased at different dates previously to said last purchase, for and on account of which said judgments were recovered, and that said goods, wares, and merchandise ware transported to the city of Chicago, and incorporated with the stock of goods then on hand and held by this defendant in his store and place of business in said city of Chicago, as in said bill is alledged.

This defendant, further answering, saith that he admits that
66 soon after said purchase of said goods was made and their arrival in Chicago, on or about the 9th day of April, 1866, the said defendant, Isaac Kempner, did propose to this defendant to purchase the entire stock of this defendant's goods, wares, and merchandise then on hand in said store at Chicago for an inadequate sum of money, to wit: fifty-five cents on the dollar, as stated in said bill, and to have a bill of sale then executed to him, said Isaac Kempner, of all said stock, so that he might hold the same against the creditors of whom said goods were then recently purchased, and others to whom

this defendant was then indebted on account thereof, as is in said bill alledged.

This defendant, further admits the fact to be that the said Isaac Kempner inquired of this defendant how many goods he had purchased in New York, and that this defendant replied about twelve thousand dollars' worth; whereupon said Kempner replied he wished he had bought thirty thousand dollars' worth, and he then
67 would have gone in with this defendant.

This defendant further answering, saith that he also admits the fact to be that he told said Kempner that he had bought said goods on three and four months' time credit in New York, and that he showed him, said Kempner, the original bills of his said purchases then recently made, and that the said Kempner then told this defendant he thought of going to Omaha, and wanted to buy a cheap stock of goods, and would give him fifty-five cents on the dollar for all of his stock then on hand in the store, which offer was then refused by this defendant. But this defendant further saith that the said Kempner, a few days after this refusal, saw this defendant again, and said he had better take the offer he had made him, as his creditors were after him; that he (this defendant) had better sell to him and "put the money in his (this defendant's) pocket, and let his creditors go to the devil;" that if this defendant intended to do anything about it, he had better do it very quick, as there was then a report about town in relation to his selling out at less than
68 cost, and some papers and attachments were out to take said goods, as in said bill alledged.

And this defendant, further answering, saith that he admits the fact to be that afterwards, on Saturday, the seventh day of April, 1866, the said Kempner told this defendant that if he waited until Monday before selling, he, Kempner, would be gone, and if he purchased the goods he would remove them at once from the store where they were, as if he left them there the creditors would replevy them certain, as in said bill is substantially alledged.

And this defendant further answering, saith that he admits that, acting upon such false and fraudulent advice, counsel, inducement, and by the special instigation of said defendant, Isaac Kempner, this defendant did then conclude a sale of his entire stock in trade and business in said store, amounting to about the sum (at cost or New York prices) of seventeen thousand six hundred dollars, for and at a discount or deduction off the said cost prices of about forty-five cents on the dollar, and making the aggregate amount of the con-
69 sideration or price of said goods in said store the gross sum of about nine thousand seven hundred dollars, as is in said bill alledged.

This defendant, further answering, admits that the inventory of said sale, and the said sale itself, were concluded and made on the next day, being Sunday, the 8th day of April, 1866, when the said Kempner took the actual possession thereof; and on Monday following, being the ninth day of April, the said Kempner removed said goods, as alledged in said bill, to a cellar or basement story of prem-

ises known as 77 Lake street, where they still remained in said Kempner's possession at the time of filing said bill of complaint.

And this defendant, further answering said bill of complaint as to said sale and delivery of said goods, states on his knowledge and belief that on the Sunday when said inventory was taken and the terms of sale agreed upon, that said Kempner requested that the key of said store should be delivered to him by this defendant, as
70 he would not pay for said goods until he had possession thereof and removed the same, and that the key was accordingly delivered him on said Sunday night; that on the following or next morning, (being Monday,) as this defendant is informed and verily believes the same to be true, the said Kempner, between the hours of eight and nine o'clock, came in person to said store, and removing all of the goods aforesaid as speedily as the same might so be removed, loaded the same on to six or seven different express wagons in front of said doors, which had been hired for the purpose, and with the aid of the expressmen and drivers of said wagons, himself and one Berks, did speedily, and before the hour of ten o'clock arrived on said Monday, pack off from said store and remove the whole amount and all of the stock of goods, wares, merchandise, and property belonging to this defendant and then in said store to said cellar or basement, No. 77, Lake street, where, as defendant is informed and believes, they still are.

And this defendant, further answering, saith that he admits
71 the fact to be, as stated in said bill, that a pretended bill of sale was made, including an inventory at cost prices of the goods aforesaid, and that on Monday, after the removal of said goods was so accomplished as aforesaid, the same was signed and delivered by this defendant; and that the said bill of sale expressed, instead of the real sum or price received for said goods, the full or cost price of said goods being, as aforesaid, the sum of about seventeen thousand dollars; and the said defendant, Kempner, insisted that he should have what was equivalent to a receipt for the full cost price of said goods, in order, as he expressly stated to this defendant, that when the New York creditors came here he might show them that he had paid for the goods dollar for dollar at the said original cost price.

And this defendant, further answering as to said sale of said goods, states the fact to be that a few days after said sale was made the said Kempner stated to this defendant it was a very good thing
72 he had sold the said goods so soon, as the creditors would have attached them or replevied them; that Friedlander was going back to New York that evening, and if the creditors replevied them he would make them pay the cost or full price of said goods, dollar for dollar.

And this defendant, further answering, saith that he knows only from what said Kempner has stated in repeated conversations with him, that his intention is to remove said goods and merchandise to Omaha, in Nebraska Territory, or some place beyond this State, to which place or places, he stated, it was his intention to remove, and that he wanted a stock of cheap goods for this purpose, and that he

believes such was or is his intention, and that he intends to dispose of said goods to his own use as stated.

This defendant, to the first interrogatory, makes answer and saith that he did sell said goods, wares, merchandise to said Kempner, on the day, in the manner and for the consideration alleged in said bill, with a view to anticipate any action or proceeding on the part
73 of said creditors as against said property, upon the representations of said Kempner that such proceedings were threatened.

To the second interrogatory the defendant, making reply, saith: that the sale was made under the circumstances, and at the time and for the consideration or amount as are in said bill alleged.

To the third interrogatory this defendant, making reply, saith: that the said Kempner did propose in substance to buy said goods and remove them, so as to prevent the creditors of this defendant from collecting their debts by process of law.

To the fourth interrogatory this defendant, making reply, saith: that said Kempner did propose to this defendant that he had better make such sale to him, put the money into his pocket, and let his creditors go to the devil, and that the sale was made upon the consideration stated.

To the fifth interrogatory this defendant, making reply, saith:
74 that he does not know of any other means belonging to this defendant in the keeping of said Kempner than as hereinbefore stated; and that an inventory of said goods was made, and this defendant supposes it is now in the hands and within the control and keeping of said Kempner, with the goods as aforesaid.

To the sixth interrogatory this defendant replies: that the amount of said goods on hand at the time of said sale was about seventeen thousand seven hundred dollars, at the cost prices thereof, and that according to the defendant's best knowledge, information, and belief, the goods at that time were of the value aforesaid, except a a slight depreciation on a portion of the goods on hand at the time of said last purchase; that this defendant actually received of said Kempner the consideration or price of nine thousand seven hundred dollars; that this defendant holds no notes, securities, bonds, obligations, or other things which are now, or have been received on account of said sale, or any other notes, securities, obligations,
75 or accounts whatsoever, which have come into his hands or possession by sale, assignment or otherwise, from any other person than as stated already herein.

To the seventh interrogatory this defendant severally answers: that the said Kempner did have knowledge of the purchases alledged in said bill, made by this defendant, of the stock in question, and that the said purchase of said goods was made by said Kempner to remove said goods to Omaha, in the Territory of Nebraska, as stated by said Kempner; and further this defendant states, that said Kempner made said purchase with full knowledge that the sale was in effect calculated and designed to hinder and delay the creditors in the collection of their debts, but that this defendant would not then have made said sale had it not been urged by said Kempner that some

creditor or creditors were then about to resort to some immediate legal proceeding to close the business of this defendant, which must have resulted, as he, Kempner, well knew, in this defendant's temporary insolvency and business failure and ruin.

76 This defendant, further answering, admits all and every of the material allegations in said bill contained, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

J. P. LEVINSON.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

John D. Levinson, being by me duly sworn, deposes and saith, that he has heard read the foregoing answer by him above subscribed, and knows the contents thereof, and that the facts and circumstances therein stated are true of his own knowledge, except as to such facts as are therein stated to be on his information and belief, and those he believes to be true.

J. P. LEVINSON.

[SEAL.] AZARIAH T. GALT,
*Notary Public for the City of Chicago.*

Endorsed: Filed May 23d, 1866. Wm. H. Bradley, cl'k.

76½ On this day, to wit, the sixth day of June, A. D. 1866, in the record of the proceedings in the above-entitled cause, appears the following order, in the words and figures, to wit:

*Hearing and order on motion to dissolve temporary injunction and postponement.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON *et al.* } Chancery.

Now come the parties, by their solicitors; and now comes on to be heard the motion of the defendant, Isaac Kempner, heretofore filed herein, to dissolve the injunction entered herein on the eighteenth day of April last, as against him; and after hearing the pleadings and the affidavits filed, the hour of adjournment having arrived, the arguments of counsel are postponed until to-morrow morning.

On this day, to wit, the seventh day of June, A. D., 1866, in the records of the proceedings in said entitled cause appears the following order, in the words and figures, to wit:

*Hearing and order taking mo. to dissolve under adv.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithoner, *vs.* JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

76⅞ Now comes again the parties, by their solicitors, and after hearing the arguments of counsel upon the motion of the defendant, Isaac Kempner, to dissolve the injunction herein, the court, not being sufficiently advised thereon, takes time to consider.

On this day, to wit, the ninth day of June, A. D. 1866, appears in the record of proceedings of said court in said entitled cause the following order, in words and figures, to wit:

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithoner, *vs.* JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

*Order continuing injunction.*

Now come the parties, by their solicitors, and the court having considered and being now fully advised upon the motion of the defendant, Isaac Kempner, heretofore submitted, to dissolve the temporary injunction entered herein on the eighteenth day of April last, does now order that the said temporary injunction be continued upon the complainants filing herein a bond in the penal sum of twelve thousand and five hundred dollars, with sureties, to be approved by this
76¼ court, to pay all damages and costs that may be ordered or adjudged to said defendant by reason of the injunction granted herein.

On this day, to wit, the twenty-seventh day of June, A. D. 1866, comes the said complainants, by their solicitors, and file herein their injunction bond in the words and figures following, to wit:

*Injunction bond.*

Know all men by these presents, that we, Charles B. Churchill, Lewis Friedlander, Herman Schlesinger, H. Aronson, C. Peck, Chas. Beardslee, Henri Poret, Lesser Steinhardt, R. Peixátto, Jacob Metz, Adolph S. Saroni, Reuben Beardslee, Clinton Briggs, are held and firmly bound unto Isaac Kempner in the sum of twelve thousand five hundred dollars, ($12,500x,) to be paid to the said Isaac Kempner, his executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the ninth day of June, A. D. 1866.

creditor or creditors were then about to resort to some immediate legal proceeding to close the business of this defendant, which must have resulted, as he, Kempner, well knew, in this defendant's temporary insolvency and business failure and ruin.

76 This defendant, further answering, admits all and every of the material allegations in said bill contained, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

J. P. LEVINSON.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

John D. Levinson, being by me duly sworn, deposes and saith, that he has heard read the foregoing answer by him above subscribed, and knows the contents thereof, and that the facts and circumstances therein stated are true of his own knowledge, except as to such facts as are therein stated to be on his information and belief, and those he believes to be true.

J. P. LEVINSON.

[SEAL.] AZARIAH T. GALT,
*Notary Public for the City of Chicago.*

Endorsed: Filed May 23d, 1866. Wm. H. Bradley, cl'k.

76½ On this day, to wit, the sixth day of June, A. D. 1866, in the record of the proceedings in the above-entitled cause, appears the following order, in the words and figures, to wit:

*Hearing and order on motion to dissolve temporary injunction and postponement.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON *et al.* } Chancery.

Now come the parties, by their solicitors; and now comes on to be heard the motion of the defendant, Isaac Kempner, heretofore filed herein, to dissolve the injunction entered herein on the eighteenth day of April last, as against him; and after hearing the pleadings and the affidavits filed, the hour of adjournment having arrived, the arguments of counsel are postponed until to-morrow morning.

On this day, to wit, the seventh day of June, A. D., 1866, in the records of the proceedings in said entitled cause appears the following order, in the words and figures, to wit:

*Hearing and order taking mo. to dissolve under adv.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithoner, } Chancery.
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER.

76⅜ Now comes again the parties, by their solicitors, and after hearing the arguments of counsel upon the motion of the defendant, Isaac Kempner, to dissolve the injunction herein, the court, not being sufficiently advised thereon, takes time to consider.

On this day, to wit, the ninth day of June, A. D. 1866, appears in the record of proceedings of said court in said entitled cause the following order, in words and figures, to wit:

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithoner, } Chancery.
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER.

*Order continuing injunction.*

Now come the parties, by their solicitors, and the court having considered and being now fully advised upon the motion of the defendant, Isaac Kempner, heretofore submitted, to dissolve the temporary injunction entered herein on the eighteenth day of April last, does now order that the said temporary injunction be continued upon the complainants filing herein a bond in the penal sum of twelve thousand and five hundred dollars, with sureties, to be approved by this
76¼ court, to pay all damages and costs that may be ordered or adjudged to said defendant by reason of the injunction granted herein.

On this day, to wit, the twenty-seventh day of June, A. D. 1866, comes the said complainants, by their solicitors, and file herein their injunction bond in the words and figures following, to wit:

*Injunction bond.*

Know all men by these presents, that we, Charles B. Churchill, Lewis Friedlander, Herman Schlesinger, H. Aronson, C. Peck, Chas. Beardslee, Henri Poret, Lesser Steinhardt, R. Peixátto, Jacob Metz, Adolph S. Saroni, Reuben Beardslee, Clinton Briggs, are held and firmly bound unto Isaac Kempner in the sum of twelve thousand five hundred dollars, ($12,500x,) to be paid to the said Isaac Kempner, his executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the ninth day of June, A. D. 1866.

Whereas the above bounden, Charles B. Churchill and Lewis Friedlander, and others, on the 17th day of April, A. D. 1866,
76½ filed their bill of complaint in the Circuit Court of the United States for the northern district of Illinois, against John D. Levinson and Isaac Kempner, for the purpose, among other things, of subjecting to the payment of the judgments of said complainants against said Levinson the goods, wares, and merchandise mentioned and set forth in a certain bill of sale from said Levinson to said Kempner, dated April 9th, 1866, of which Schedule A, annexed to the answer of said Kempner filed in said cause purports to be a copy.

And whereas, on motion of said complainants, and on the 18th day of April, 1866, an injunction was ordered by said court, restraining said Kempner from selling or using said goods, wares, and merchandise, or removing them beyond the jurisdiction of said court until its further order:

Now, therefore, the condition of the above obligation is such, that if the said Charles Churchill and Lewis Friedlander, and the others of the complainants in said bill of complaint, shall indemnify and save harmless the said Isaac Kempner from all damages and costs accruing or happening to him, on account or by reason of the said restraining of said Kempner from disposing of said goods,
76¾ wares and merchandise; and in the event that said court shall, by final decree in said cause, determine and adjudge that such goods, wares, and merchandise belong to the said Kempner and not to said Levinson, and are not subject to the payment of said complainants judgments, nor either of them, and in the latter case shall pay to said Isaac Kempner, his heirs or legal representatives, his costs and damages consequent upon such injunction and restraining then the above obligation to be null and void, otherwise to remain in full force and effect.

| | |
|---|---|
| [SEAL.] | CHARLES B. CHURCHILL. |
| [SEAL.] | LOUIS FRIEDLANDER. |
| [SEAL.] | R. PEIXATTO, (G. A. D. & Co.) |
| [SEAL.] | HERMAN SCHLEISINGER. |
| [SEAL.] | H. ARONSON. |
| [SEAL.] | C. PECK. |
| [SEAL.] | JACOB METZ. |
| [SEAL.] | CHAS. BEARDSLEE. |
| [SEAL.] | HENRY PORET. |
| [SEAL.] | LESSER STEINHARDT, (M. S. & Co.) |
| [SEAL.] | AD. S. SARONI. |
| [SEAL.] | REUBEN BEARDSLEE. |
| [SEAL.] | CLINTON BRIGGS. |

Endorsed: Filed June 27, 1866. Wm. H. Bradley, cl'k.

77 And on the thirteenth day of December, 1866, came the said complainants, by Hoyne & Horton, their solicitors, and file their replication in said entitled cause, which replication is in the words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois.

*Complainants' replication to answer of defendant Isaac Kempner.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER.

The replication of Charles B. Churchill, Leonard K. Smith, Lewis Freidlander, Julius Stich, and Leopold Lithaner, complainants, to the answer of Isaac Kempner, one of the defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiences of the said answer for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in the
78 law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

HOYNE & HORTON,
*Complainants' Solicitors.*

Endorsed: Filed Dec'b. 13, 1866. Wm. H. Bradley, cl'k.

79 And on Thursday, March seventh, 1867, appears of record in said cause an order, in the words and figures following, to wit:

*Cause set down for hearing.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

Now come the parties, by their solicitors, and thereupon, by agreement, this cause is set down for hearing upon the bill of complaint, answer, replications, proofs and exhibits on file herein.

And on Thursday, May second, 1867, appears a further order of record in said cause, in the words and figures following, to wit:

*Hearing of cause.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

This cause having heretofore been set down for hearing,
80 now come the complainants, by Hoyne & Moore, their solicitors, and the defendant, Isaac Kempner, by Goodwin & Larned, his solicitors, and after hearing a part of the proofs, the hour of adjournment having arrived, the further hearing of the cause is postponed until to-morrow morning.

And on Friday, May third, 1867, appears a further order in said cause, which is in the words and figures following, to wit:

*Further hearing of cause.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

Now come again the said parties, by their solicitors, and after hearing the concluding proofs, the hour of adjournment having arrived, the arguments of counsel are postponed until to-morrow morning.

And on Saturday, May fourth, 1867, appears a further order of record in said cause, which is in the words and figures following, to wit:

81 CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

*Arguments of counsel on hearing.*

Now come again the said parties, by their solicitors, and after hearing a part of the arguments of counsel, the hour of adjournment having arrived, the further hearing of the cause is postponed until Monday morning next.

And on Monday, the sixth day of May, 1867, there appears a further order of record in said cause, which is in the words and figures following, to wit:

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner, *vs.* JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

*Taken under advisement.*

Now come again the said parties, by their attorneys, and after hearing the concluding arguments of counsel, the court not being sufficiently advised in the premises, takes time to consider.

82 And now, on Tuesday, the eleventh day of June, 1867, there appears of record in said cause, a decretal order, which is in the words and figures following, to wit:

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner, *vs.* JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

*Decree.*

And now, again at this day come the parties, complainants, by Hoyne, Horton, and Moore, their solicitors, and said defendant Kempner, by Goodwin and Larned, his solicitors, also come; and the court, being now fully advised upon the hearing and arguments heretofore had in this cause by bill, and the answers of said defendants, as well also as upon the depositions of witnesses, stipulations, and proofs submitted; and the court being satisfied from the evidence that the sale made by said defendant, Levinson, of his whole stock in trade on the ninth day of April, A. D. eighteen hundred and sixty-six, to said defendant, Kempner, as alleged and set forth in said complainants' bill of complaint, was made in fraud by said Levinson, with the intent to hinder and delay his creditors, of which the said

83 defendant, Kempner, then and there had notice.

It is thereupon ordered, adjudged, and decreed that the said sale of the goods, wares, and merchandise of said Levinson, and purchased by said Kempner on the ninth day of April, A. D. eighteen hundred and sixty-six, be, and the same is hereby, set aside, and held for naught, as to all and singular the said complainants in this cause, and the other judgment creditors, also made parties by the stipulation heretofore made with regard to the amendment of said bill of complaint by the addition of such other judgment creditors as appeared of record in this court, and whose names are given in said stipulation signed by the solicitors of the parties hereto, and that in all respects, the said sale be declared fraudulent and void as to said creditors of said Levinson.

*Injunction perpetual vs. Kempner.*

And it is further ordered that the injunction heretofore issued out of this court, as prayed for in the said complainants' bill of complaint, shall be, and the same is hereby declared to be, perpetual as against said Kempner and said Levinson; and that J. Russel Jones, the United States marshal of this district, be appointed receiver
84 and take possession of the stock of goods, consisting of all the goods, wares, and merchandise embraced in the sale of said defendant, Levinson, to Kempner on the ninth day of April, eighteen hundred and sixty-six, and removed by said Kempner to the place designated in said bill of complaint, and to prevent the removal or sale of which by said Kempner said injunction was issued, and that the same be now taken into the actual custody of the said United States marshal of this district, as receiver of this court; and that he shall, as such receiver, proceed upon due publication of notice and advertisement, the same as is required by law in other cases of sales of personal property under executions issued upon judgments at law, and sell the same at public vendue for cash, at such time and place as may be designated by him in such advertisement, and as soon as the same can reasonably be done, and forthwith return the proceeds of such sale into this court for distribution pro rata among the several judgement creditors, entitled thereto in pro tanto satisfaction of their several judgements.

And it is further ordered and decreed, that as soon as said pro-
85 ceeds of said sale are returned and made into this court that the clerk, William H. Bradley, esq., shall ascertain and compute the amount of the several judgements obtained by said complainants and other judgement creditors in this court, appearing to be entitled by stipulation, or as parties complainant to share in the distribution of said proceeds; and that after deducting the costs and expenses incurred and paid out in all said proceedings, he shall apply the balance of all moneys so paid in and returned to him by said J. Russel Jones, the United States marshall, as receiver, to the payment of said several judgement creditors or their solicitors in this cause pro rata, as they shall severally appear to be entitled thereto, according to the said amounts due them upon their said several judgements, and that the receipt of the plaintiffs in said judgements, or that of their solicitors appearing for them as complainants, or parties in this cause, shall be a sufficient voucher of said payments.

It is further ordered, according to stipulation of the parties filed herein, that the following-named parties, appearing equally interested as judgement creditors, and entitled to show pro rata as judgement creditors of said defendant Levinson, on the proceeds of said sale and the benefits of this decree, be allowed, as parties com-
86 plainant in this suit, to present their claims as judgement creditors; and on motion of said complainants' solicitors, it is ordered, according to the stipulation on file, signed by the solicitors of said Kempner, that the bill of complaint in said cause stand amended by the addition of the names hereinafter set down as joint

parties complainant therein, so that the benefits of said decree may be equitably apportioned among all the creditors of said defendant, Levinson, whose judgements appear of record on the common law side of this court, and who have joined in the prosecution of this suit according to the stipulation on file, viz: Charles Beardslee, judgment rendered April sixteenth, eighteen hundred and sixty-six, for fourteen hundred and thirty-eight dollars and costs; George A. Davis, Raphael Peixato, and Philip Straus for seventeen hundred and thirty-eight dollars and seventy-five cents and costs, April seventeenth, eighteen hundred and sixty-six; Adolph S. Savoni and Moritz Lindemaun, for six hundred and fifty-six dollars and seventy-five cents and costs, April seventeenth, eighteen hundred and sixty-six; M. Steinhardt, judgement for eleven hundred and sixty-nine dollars and costs, April seventeenth, eighteen hundred and sixty-six; H.
87 Schlesinger and George White, judgement for seventeen hundred and six dollars and fifty cents and costs, April seventeenth, eighteen hundred and sixty-six; J. Metz, E. Nathan, and S. Nathan, judgment for ten hundred and fifty dollars and sixty-two cents and costs, April seventeenth, eighteen hundred and sixty-six; H. Aronson, judgment for twelve hundred and two dollars and fifty cents and costs, April seventeenth, eighteen hundred and sixty-six; Henry Paret and John Paret, jr., judgement for eight hundred and fifty-three dollars and fifty cents and costs, April seventeenth, eighteen hundred and sixty-six; Edward Coleman and Isaac Farnbacker, judgement for five hundred and seventy-seven dollars and costs, May twenty-ninth, eighteen hundred and sixty-six. All which judgements will appear entered of record in this court, and to which, for greater certainty, reference thereunto is hereby made in the computation to be made by the clerk of this court of the several amounts entered and costs, respectively due on said judgements, with a view to the division of said proceeds of said sale as before required.

88 And further, it is ordered that the said defendants pay the costs of this proceeding, and thereupon the defendant, Isaac Kempner, by his solicitor, moves the court for an appeal to the Supreme Court.

And on the fourteenth day of June, 1867, come the parties, complainants, and defendant, Kempner, by their solicitors respectively, and file herein their stipulation to amend the bill in said cause, which stipulation to amend is in the words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois.

*Stipulation to amend bill with amendments additional, parties complainant.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner, } Chancery.
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER.

It is hereby stipulated and agreed by and between the parties complainants and defendant, Kempner, that the bill filed by complainants

in this cause shall stand amended by the addition of the following named persons as additional parties complainants to the above bill of complaint in said entitled cause, the said parties being judge-
89 ment creditors of record in this court, against said John D. Levinson; and being also equally entitled to equal priority with said complainants as judgement creditors to the benefits of any decree which may be obtained in their favor in said cause, viz :

April 16th, 1866. Charles Beardslee *vs.* John D. Levinson. Judgement for $14 38 and costs.

April 17th, 1866. George A. Davis, Raphael Peixatto and Philip Strauss *vs.* same. Judg't for $1,738 75 and costs.

April 17th, 1866. Adolph Savoni and Moitz Lindeman *vs.* same. Judg't for $656 75 and costs.

M. Steinhault *vs.* same, April 17th, 1866. Judgement for $1,169 and costs.

April 17th, 1866. H. Schlesinger and George White *vs.* same. Judg't for $1,706 50 and costs.

April 17th, 1866. J. Metz, E. Nathan, and S. Nathan *vs.* same. Judg't for $1,050 62 and costs.

April 17th, 1866. H. Arvason *vs.* same. Judg't for $1,202 50 and costs.

April 17th, 1866. Henry Paret and John Paret, jr. *vs.* same. Judgement for $853 50 and costs.

May 29th, 1866. Edward Coleman and Isaac Farntucker *vs.* same. Judg't for $577 and costs.

And it is therefore agreed and understood that the decree rendered in the above-entitled cause shall be equally binding
90 upon all said parties complainant, and that in case the same shall be in favor of said complainants as to the property in controversy, that the proceeds or benefits thereof shall be shared pro rata among the several parties as judgement creditors, according to the amount of their respective judgements and according as they may appear to be equitably entitled thereto in the judgement of the court.

Provided, and it is further agreed, that such amendment shall not in any respect alter or prejudice the right of the defendant Kempner to appeal, if a decree goes for the complainants, on giving the same security as if said amendment had not been made to effect stay of proceedings.

CHICAGO, *Nov'r* 9, 1866.

HOYNE & HORTON,
*Sol'r for Complainants.*
GOODWIN & LARNED,
*Sol'r for Def't, Kempner.*

Please send us a copy of the above stipulation signed in duplicate.
G. & L.

Endorsed: Filed June 14, 1867. Wm. H. Bradley, cl'k.

91 And afterwards, to wit, on the first day of July, 1867, come the said defendant, Isaac Kempner, and filed in the office of the clerk of said court his bond on appeal to the Supreme Court, with David Adams, as surety; which appeal bond is in the words and figures following, to wit:

Circuit Court of the United States for the eighth circuit and nor. dist. of Ills., in chancery.

*Appeal bond.*

JOHN LEVINSON and ISAAC KEMPNER *ads.* CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner. } Appeal.

Know all men by these presents, that we, Isaac Kempner and David Adams, are held and firmly bound unto the above-named Charles B. Churchill, Leonard K. Smith, Lewis Friedlander, Julius Stich, and Leopold Lithaner in the sum of five hundred dollars, to be paid to the said Charles B. Churchill, Leonard K. Smith, Lewis Friedlander, Julius Stich, and Leopold Lithaner, their execu-

92 tors and administrators, to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, and our, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this day of June, A. D. one thousand eight hundred and sixty-seven.

Whereas the above-named Isaac Kempner hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the Circuit Court of the United States for the eighth circuit and northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Isaac Kempner shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] ISAAC KEMPNER.
[SEAL.] DAVID ADAMS.

Sealed and delivered in presence of—
S. A. GOODWIN.

Approved:

THOMAS DRUMMOND.

Endorsed: Filed July 1st, 1867. Wm. H. Bradley, cl'k.

93 On this 9th day of July, A. D. 1867, J. Russell Jones, esq., receiver, filed his report in said cause, in words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois.

*Receiver's report.—Copy.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stitch, and Leopold Lithaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } In chancery.

To the honorable the judges of the Circuit Court of the United States for the northern district of Illinois, sitting in equity:

J. Russell Jones, the United States marshal for the above-named district, the receiver appointed by the court in the above-entitled cause, (see certified copy of order hereto annexed, marked "A,") respectfully reports:

That he took possession of the goods mentioned, described, and enumerated in the schedule hereto attached, marked "Exhibit
94 B," under and by virtue of the authority in him vested as receiver in said above-entitled cause, on the 18th day of June, A. D. 1867, and that on the same day he caused the same to be insured for the sum of ten thousand dollars, as will appear by three certificates of insurance hereto attached, marked respectively "C," "D," and "E," and paid for such insurance the sum of twenty-eight dollars; and that afterwards, to wit, on the 2nd day of July instant, after having caused due publication and advertisement of notice of the time and place of such sale, the same as is required by law in other cases of sales of personal property under execution issued upon judgments at law, a copy of which notice, marked "F," is hereunto attached, the said goods were offered for sale at public vendue at the time and place mentioned and specified in said notice, and were then and there sold to the highest and best bidders therefor for cash, at prices which will appear by reference to "Exhibit B," hereinbefore referred to, the sum for which said goods were so as aforesaid sold amounting in the aggregate to five thousand nine hundred and fifty dollars and thirty cents, ($5,950 30,) which is
95 herewith returned into court.

And he further reports that he paid for moving said goods from their place of storage to the place where the same were sold as aforesaid, on the 27th day of June, 1867, the sum of three dollars, as will appear by the receipt of P. Quinn hereto attached, and that the charge of Isaac Marks for storing said goods from June 18th, 1867, to June 27th, 1867, is eight dollars, which has been paid by me to him, as will also appear by his receipt hereto attached.

And he further reports that he has charged for his services in and about the sale of said goods the sum of ninety-two dollars and twenty-five cents, ($92 25,) the same being a commission upon the proceeds of the sale aforesaid of three per centum upon two hundred dollars thereof, and of one and one-half per centum upon the balance thereof, which he prays may be allowed to him in full of his services

as receiver in the cause above-entitled, together with the disbursements made by him as aforesaid.

And he also reports that the bills herewith filed, to wit, one of Conrad Witowsky, for $182 00, and the other of Isaac Marks,
96 for $403 00, were handed to him by S. A. Goodwin, esq., June 18th, 1867.

All which is respectfully submitted. Dated July 17th, 1867.

J. R. JONES,
*U. S. Marshal Nor. District of Illinois, Receiver.*

| | |
|---|---|
| Am't p'd for insuring | $28 00 |
| " " " moving goods | 3 00 |
| " " " storing " | 8 00 |
| | $39 00 |
| Com'n | 92 25 |
| | 131 25 |

97 Circuit Court of the United States, northern district of Illinois.

*Exhibit A, annexed to receiver's report.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friendlander, Julius Stich, and Leopold Lithaner, *vs.* JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

TUESDAY, *June 11th*, A. D. 1867.

Present, the Hon. Thomas Drummond, judge.

And now again, at this day, come the parties complainants, by Hoyne, Horton and Moore, their solicitors, and said defendant, Kempner, by Goodwin & Larned, his solicitors, also comes; and the court being now fully advised upon the hearing and arguments heretofore had in this cause by bill and the answers of said defendants, as well also as upon the depositions of witnesses, stipulations,
98 and proofs submitted, and the court being satisfied from the evidence that the sale made by said defendant Levinson of his whole stock in trade, on the ninth day of April, A. D. eighteen hundred and sixty-six, to said defendant, Kempner, as alleged and set forth in said complainants' bill of complaint, was made in fraud by said Levinson, with intent to hinder and delay his creditors, of which the said defendant, Kempner, then and there had notice, it is thereupon ordered, adjudged, and decreed that the said sale of goods, wares, and merchandise of said Levinson, and purchased by said Kempner, on the ninth day of April, A. D. eighteen hundred and sixty-six, be, and the same is hereby, set aside and held for

nought, as to all and singular the said complainants in this cause, and the other judgment creditors, also made parties by the stipulation heretofore made with regard to the amendment of said bill of compplaint, by the addition of such other judgment creditors as appeared of record in this court, and whose names are given in said stipulation, signed by the solicitors of the parties hereto, and that in all respects
99 the said sale be declared fraudulent and void as to said creditors of said Levinson; and it is further ordered, that the injunction heretofore issued out of this court, as prayed for in the said complainants' bill of complaint, shall be, and the same is hereby, declared to be perpetual as against said Kempner and said Levinson, and that J. Russell Jones, the United States marshal of this district be appointed receiver and take possession of the stock of goods, consisting of all the goods, wares, and merchandise embraced in the sale of said defendant, Levinson, to Kempner, on the ninth day of April, eighteen hundred and sixty-six, and removed by said Kempner to the place designated in said bill of complaint, and to prevent the removal or sale of which, by said Kempner, said injunction was issued, and that the same be now taken into the actual custody of the said United States marshal of this district, as receiver of this court, and that he shall, as such receiver, proceed, upon due publication of notice and advertisement, the same as is required by law in other cases of sales of per-
100 sonal property under execution issued upon judgments at law, and sell the same at public vendue for cash, at such time and place as may be designated by him in such advertisement, and as soon as the same can reasonably be done, and forthwith return the proceeds of such sale into this court, for distribution pro rata among the several judgment creditors entitled thereto, in pro tanto satisfaction of their several judgments; and it is further ordered and decreed, that as soon as said proceeds of said sale are returned and made into this court, that the clerk, William H. Bradley, esq., shall ascertain and compute the amount of the several judgments obtained by said complainants and other judgment creditors in this court appearing to be entitled by stipulation, or as parties complainant, to share in the distribution of said proceeds, and that after deducting the costs and expenses incurred and paid out in all said proceedings, he shall apply the balance of all moneys so paid in and returned to him by said J. Russell Jones, the United States mashal, as receiver, to the payment of said several judgment creditors, or their soli-
101 citors in this cause pro rata, as they shall severally appear to be entitled thereto, according to the said amounts due them upon their said several judgments, and that the receipt of the plaintiffs in said judgments, or that of their solicitors appearing for them as complainants or parties in this cause, shall be a sufficient voucher of said payments. It is further ordered, according to stipulation of the parties filed herein, that the following-named parties appearing equally interested as judgment creditors and entitled to share pro rata as judgment creditors of said defendant, Levinson, in the proceeds of said sale, and the benefits of this decree be allowed, as parties complainant in this suit, to present their

claims as judgment creditors; and on motion of said complainants' solicitors, it is ordered, according to the stipulation on file, signed by the solicitors of said Kempner, that the bill of complaint in said cause stand amended by the addition of the names hereinafter set down as joint parties complainant therein, so that the benefits of said decree may be equitably apportioned among all the creditors
102 of said defendant, Levinson.

Judgments appear of record on the common law side of this court, and who have joined in the prosecution of this suit, according to the stipulation on file, viz:

Charles Beardslee, judgment rendered April sixteenth, eighteen hundred and sixty-six, for fourteen hundred and thirty-eight dollars and costs; George A. Davis, Raphael Prixato, and Philip Straus, for seventeen hundred and thirty-eight dollars and seventy-four cents and costs, April seventeenth, eighteen hundred and sixty-six; Adolphe S. Savoni and Moritz Lindermaun, for six hundred and fifty-six dollars and seventy-five cents and costs, April seventeenth, eighteen hundred and sixty-six; M. Steinhardt, judgment for eleven hundred and sixty-nine dollars and costs, April seventeenth, eighteen hundred and sixty-six; H. Schelsinger and George White, judgment for seventeen hundred and six dollars and fifty cents and costs, April seventeenth, eighteen hundred and sixty-six; J. Metz, E. Nathan, and S. Nathan, judgment for ten hundred and fifty dollars and sixty-two cents and costs, April seventeenth, eighteen hundred and
103 sixty-six; H. Aaronson, judgment for twelve hundred and two dollars and fifty cents and costs, April seventeenth, eighteen hundred and sixty-six; Henry Paret and John Paret, jr., judgment for eight hundred and fifty-three dollars and fifty cents and costs, April seventeenth, eighteen hundred and sixty-six; Edward Coleman and Isaac Farnbacker, judgment for five hundred and seventy-seven dollars and costs, May twenty-ninth, eighteen hundred and sixty-six; all of which judgments will appear entered of record in this court, and to which, for greater certainty, reference thereunto is hereby made in the computations to be made by the clerk of this court of the several amounts entered and costs, respectively due on said judgments, with a view to the division of said proceeds of said sale as before required.

And further, it is ordered that the said defendants pay the costs of this proceeding; and thereupon the defendant, Isaac Kempner, by his solicitor, moves the court for an appeal to the Supreme Court.

104 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the Circuit Court of the United States for said district, hereby certify the above and foregoing to be a true, correct, and complete copy from the record of the proceedings of said court in chancery of the decree entered of record on the eleventh day of June, A. D. 1867, in said entitled cause of Charles B. Churchill *et al. vs.* John D. Levinson *et al.*, as the same appears of record remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this eighteenth day of June, A. D. eighteen hundred and sixty-seven, and of our independence the ninety-first year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

105 *Exhibit B, annexed to receiver's report.*

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1 | piece | cassimere, | | 9¾ | yds., | sold at | $1 30 | per yd., | $12 67 |
| 1 | " | " | | 18 | " | " | 95 | " | 17 10 |
| 1 | " | " | | 7 | " | " | 1 30 | " | 9 10 |
| 1 | " | " | | 21¼ | " | " | 1 05 | " | 22 31 |
| 2 | " | " | | 3½ | " | " | 1 15 | " | 4 03 |
| 1 | " | " | | 34½ | " | " | 90 | " | 31 05 |
| 1 | " | " | | 28 | " | " | 1 30 | " | 36 40 |
| 1 | " | " | | 26¼ | " | " | 1 15 | " | 30 19 |
| 1 | " | " | | 31¼ | " | " | 90 | " | 28 59 |
| 1 | " | " | | 3⅞ | " | " | 85 | " | 3 28 |
| 1 | " | " | | 3⅕ | " | " | 1 45 | " | 4 53 |
| 1 | " | " | 6/4 | 10¼ | " | " | 2 50 | " | 25 62 |
| 1 | " | beaver, | | 4¼ | " | " | 3 50 | " | 14 88 |
| 1 | " | cassimere, | 6/4 | 8¾ | " | " | 3 25 | " | 28 44 |
| 1 | " | cloth, | 6/4 | 4 | " | " | 4 25 | " | 17 00 |
| 1 | " | silk mixed, | | 10¼ | " | " | 3 55 | " | 36 39 |
| 1 | " | beaver, | | 5¼ | " | " | 4 37½ | " | 22 97 |
| 1 | " | silk mix'd cas. | | 2¼ | " | " | 1 30 | " | 2 93 |
| 1 | " | ribbed | " | 5 | " | " | 3 25 | " | 16 25 |
| 1 | " | | " | 10¾ | " | " | 80 | " | 8 60 |
| 1 | " | doeskin, | | 5 | " | " | 1 50 | " | 7 50 |
| 1 | " | plaid cass., | | 21¼ | " | " | 1 50 | " | 31 88 |
| 1 | " | | " | 9¾ | " | " | 1 45 | " | 14 13 |
| 1 | " | 6/4 | " | 9¾ | " | " | 1 95 | " | 19 02 |
| 1 | " | lt. | " | 15⅞ | " | " | 1 75 | " | 27 78 |
| 1 | " | 6/4 | " | 1¾ | " | " | 2 12½ | " | 3 72 |

106 Am't forward..... $476 36

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1 | piece | cassimere, | | 6⅞ | yds., | sold for | $3 15 | per yd., | $21 65 |
| 1 | " | 6/4 | " | 6¾ | " | " | 3 85 | " | 25 99 |
| 1 | " | | " | 2¾ | " | " | 1 87½ | " | 5 17 |
| 1 | " | | " | 11 | " | " | 2 05 | " | 22 55 |
| 1 | " | beaver, | | | | " | | | 5 50 |
| 1 | " | marino, | | 11½ | " | " | 1 30 | " | 14 96 |
| 1 | " | cloth, | | 8 | " | " | 2 95 | " | 23 60 |
| 1 | " | " | | 20¾ | " | " | 4 05 | " | 84 04 |
| 1 | " | " | | 14 | " | " | 1 65 | " | 23 10 |
| 1 | " | " | | 14⅛ | " | " | 3 90 | " | 55 08 |
| 6 | sack coats, | | | | | " | 6 00 | each, | 36 00 |
| 12 | " | " | | | | " | 2 62½ | " | 31 50 |
| 4 | register coats, | | | | | " | 5 25 | " | 21 00 |
| 6 | | " | | | | " | 4 00 | " | 24 00 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 5 | sack | coats, | sold for | $4 | 00 | each | $20 00 |
| 6 | " | " | " | 4 | 87½ | " | 29 25 |
| 4 | " | " | " | 3 | 25 | " | 13 00 |
| 8 | ass't'd | " | " | 4 | 25 | " | 34 00 |
| 5 | " | " | " | 4 | 75 | " | 23 75 |
| 2 | " | " | " | 4 | 75 | " | 9 50 |
| 3 | " | " | " | 5 | 50 | " | 16 50 |
| 3 | sack | " | " | 6 | 75 | " | 20 25 |
| 4 | business | " | " | 5 | 00 | " | 20 00 |
| 3 | " | " | " | 4 | 25 | " | 12 75 |
| 2 | " | " | " | 4 | 25 | " | 8 50 |
| | 5 | steel mix'd coats, | " | 3 | 62½ | " | 18 13 |
| 107 | 4 | frock coats, | " | 5 | 25 | " | 21 00 |
| | 11 | linen " | " | 1 | 75 | " | 19 25 |
| 11 | linen | coats, | " | 1 | 90 | " | 20 90 |
| 17 | " | " | " | 1 | 40 | " | 23 80 |
| 2 | frock | " | " | 14 | 75 | " | 29 50 |
| 12 | linen | " | " | 1 | 35 | " | 16 20 |
| 11 | " | " | " | 1 | 25 | " | 13 75 |
| 4 | frock | " | " | 12 | 25 | " | 49 00 |
| 5 | " | " | " | 12 | 12½ | " | 60 63 |
| 2 | " | " | " | 11 | 50 | " | 23 00 |
| 6 | sack | " | " | 5 | 25 | " | 31 50 |
| 3 | frock | " | " | 11 | 75 | " | 35 25 |
| 3 | " | " | " | 12 | 35 | " | 38 25 |
| 6 | " | " | " | 7 | 25 | " | 43 50 |
| 6 | sack | " | " | 5 | 50 | " | 33 00 |
| 2 | " | " | " | 8 | 00 | " | 16 00 |
| 1 | over | " and cape, | " | | | | 11 25 |
| 1 | frock | " | " | | | | 4 00 |
| 12 | over | " ass't'd, | " | 6 | 87½ | | 82 50 |
| 15 | suits pants and vests, | | " | 4 | 37½ | | 65 63 |
| 6 | sack coats, | | " | 3 | 75 | | 22 50 |
| 9 | pr. pants ass't'd, | | " | 2 | 62½ | | 23 63 |
| 17 | " | " " | " | 3 | 37½ | | 57 37 |
| 1 | piece linen duck | 4½ yds., | " | 1 | 20 | per yd., | 5 40 |
| 1 | " | " 33 " | " | | 25 | " | 8 25 |
| 1 | " | satin due chein 43½ yds., | " | 1 | 17½ | " | 51 12 |
| 1 | " | " " " 46¼ " | " | | 95 | " | 43 94 |

| | | |
|---|---|---|
| 108 | Am't forward ..... | $1,946 25 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1 | piece | It. cloth, | 42 | yds., | sold for | $1 00 | per yard, | 42 00 |
| 1 | " | " | 30½ | " | " | 80 | " | 24 40 |
| 1 | " | satin, | 4 | " | " | 4 25 | " | 17 00 |
| 1 | " | lining, | 19 | " | " | 20 | " | 3 80 |
| 1 | " | It. cloth, | 53⅓ | " | " | 22½ | " | 12 04 |
| 1 | " | satin duck, | 31 | " | " | 1 05 | " | 32 55 |
| 1 | " | padding, | 33 | " | " | 33½ | " | 11 06 |
| 1 | " | W. cloth, | 52½ | " | " | 30 | " | 15 75 |
| 1 | " | Str. cloth, | 40 | " | " | 44 | " | 17 60 |

| | | | | | |
|---|---|---|---|---|---|
| 10 | vest patterns, | sold for | $4 12½ | | $41 25 |
| 8 | " " | " | 1 05 | | 8 40 |
| 1 | piece Bro. linen, 30 yds., | " | 22 | per yard. | 6 60 |
| 1 | " silicia, 31 " | " | 27 | " | 8 37 |
| 1 | " red padding, 9¾ " | " | 08 | " | 78 |
| 2 | " bl'k lining, 69 " | " | 16 | " | 11 04 |
| 3 | " lining, &c., 11¾ " | " | 23 | " | 2 71 |
| 1 | " brown lace, 44 " | " | 23 | " | 10 12 |
| 54 | white shirts, | " | 1 75 | | 94 50 |
| 46 | " " | " | 1 80 | | 82 80 |
| 23 | " " | " | 1 75 | | 40 25 |
| 19 | " " | " | 1 72½ | | 32 77 |
| 48 | " " | " | 1 67½ | | 80 40 |
| 39 | " " | " | 1 50 | | 58 50 |
| 8 | bl'k silk h'd'k'fs, | " | 1 10 | | 8 80 |
| 54 | " " " | " | 52½ | | 28 35 |
| 59 | " " " | " | 62½ | | 36 88 |
| | 50 h'dk'fs., sold for | 25 | | | 12 50 |
| 109 | 6 " " | 50 | | | 3 00 |
| | 17 " " | 25 | | | 4 25 |
| 43 | h'dk'fs., " | 18 | | | 7 74 |
| 10 | " " | 25 | | | 2 50 |
| 31 | half gloves, " | 45 | | | 13 95 |
| 18 | pr. half gloves, " | 40 | | | 7 20 |
| 36 | " " " " | 50 | | | 18 00 |
| 10 | " gloves, " | 32½ | | | 3 25 |
| 11 | " " " | 37½ | | | 4 13 |
| 23 | " " " | 17½ | | | 4 03 |
| 44 | " " asst'd, " | 35 | | | 15 40 |
| 12 | scarfs, " | 65 | | | 7 80 |
| 36 | " " | 50 | | | 18 00 |
| 93 | butterflies, " | 07 | | | 6 51 |
| 74 | scarfs, " | 25 | | | 18 50 |
| 18 | " " | 45 | | | 8 10 |
| 83 | ties, " | 19 | | | 15 77 |
| 340 | " " | 09 | | | 30 60 |
| 210 | " " | 14 | | | 29 40 |
| 131 | " " | 07 | | | 9 17 |
| 52 | scarfs pins, " | 13 | | | 6 76 |
| 48 | pr. socks, " | 14 | | | 6 72 |
| 68 | " " " | 19½ | | | 13 26 |
| 29 | " " " | 22½ | | | 6 53 |
| 131 | " " " | 10 | | | 13 10 |
| 48 | " " " | 15 | | | 7 20 |
| 110 | Am't forward | | | | $2,968 34 |
| 11 | pairs socks, sold for | 35 | | | 3 85 |
| 60 | " " " | 10 | | | 6 00 |
| 1 | " gloves, " | 50 | | | 50 |
| 5 | blouses, " | 4 87½ | | | 24 38 |

| | | | | | |
|---|---|---|---|---|---|
| 1 | linen coat, | sold for | | | $81 25 |
| 1 | frock coat, | " | | | 14 75 |
| 2 | pair pants | " | $2 | 62½ | 5 25 |
| 1 | piece duck, 37⅝ yds., | " | 1 | 20 | 45 15 |
| 1 | yard canvas, | " | | | 33 |
| 1 | pair gloves, | " | | | 20 |
| 8 | ties, | " | | 45 | 360 |
| 6 | pair hose, | " | | 25 | 1 50 |
| 2½ | yds. cassimere, | " | 1 | 45 | 3 63 |
| 1 | p'c. ¼ cloth, 19¼ yds., | " | 1 | 90 | 36 57 |
| 1 | " " " 12⅜ " | " | 2 | 25 | 27 84 |
| 1 | " " " 12⅝ " | " | 2 | 00 | 25 25 |
| 6 | " " " 9 " | " | 1 | 60 | 14 40 |
| 1 | "blue velvet, 30½ yds., | " | 6 | 00 | 183 00 |
| 12 | pairs black pants, | " | 4 | 50 | 54 00 |
| 2 | " cass., " | " | 4 | 87½ | 9 75 |
| 6 | " " " | " | 5 | 00 | 30 00 |
| 7 | " " " | " | 4 | 25 | 29 75 |
| 6 | " " " | " | 3 | 25 | 19 50 |
| 7 | " " " | " | 3 | 25 | 22 75 |
| 8 | " " " | " | 3 | 30 | 26 40 |
| 4 | " " " | " | 3 | 87½ | 15 50 |
| | 10 prs. cass. pants, | " | 2 | 50 | 25 00 |
| 111 | 9 " " " | " | 1 | 90 | 17 10 |
| | 10 " " " | " | 3 | 00 | 30 00 |
| 7 | prs. cass. pants, | " | 3 | 50 | 24 50 |
| 23 | vests assorted, | " | 1 | 30 | 29 90 |
| 22 | " " | " | 1 | 27½ | 28 05 |
| 22 | " " | " | 1 | 42⅓ | 31 35 |
| 9 | " " | " | 1 | 40 | 12 65 |
| 8 | " " | " | 1 | 50 | 12 00 |
| 11 | suits, p'nts and vests, | " | 5 | 75 | 63 25 |
| 12 | " " " " | " | 5 | 12½ | 61 50 |
| 12 | " " " " | " | 5 | 37½ | 64 50 |
| 11 | " " " " | " | 4 | 50 | 49 50 |
| 6 | " " " " | " | 5 | 50 | 33 00 |
| 11 | " " " " | " | 5 | 00 | 55 00 |
| 12 | " " " " | " | 4 | 25 | 51 00 |
| 14 | " " " " | " | 5 | 75 | 80 50 |
| 12 | " " " " | " | 4 | 50 | 54 00 |
| 12 | " " " " | " | 3 | 60 | 43 20 |
| 6 | " " " " | " | 5 | 50 | 33 00 |
| 12 | " " " " | " | 3 | 12½ | 37 50 |
| 12 | " coats, p'nts, and vests, | " | 6 | 25 | 75 00 |
| 12 | " pants and vests, | " | 5 | 87½ | 70 50 |
| 10 | " " " " | " | 4 | 25 | 42 50 |
| 4 | " " " " | " | 5 | 37½ | 21 50 |
| 13 | " " " " | " | 5 | 75 | 74 70 |
| 9 | " " " " | " | 3 | 87½ | 34 87 |
| 112 | Amount forward | | | | $4,729 01 |

| | | | | |
|---|---|---|---|---|
| 2 | suits pants and vests, | sold for | $5 75 ..... | $11 50 |
| 10 | " " " " | " | 4 62½ ..... | 46 25 |
| 11 | " " " " | " | 4 50 ..... | 49 50 |
| 9 | suits pants and vests, | " | 4 25 ..... | 38 25 |
| 3 | " " " " | " | 5 50 ..... | 16 50 |
| 8 | " " " " | " | 3 75 ..... | 30 00 |
| 6 | coats, | " | 5 62½ ..... | 32 76 |
| 3 | " | " | 4 12½ ..... | 12 38 |
| 3 | " | " | 6 25 ..... | 18 75 |
| 2 | over-coats, | " | 16 00 ..... | 32 00 |
| 4 | " | " | 5 62 ..... | 22 50 |
| 8 | " | " | 14 75 ..... | 118 00 |
| 24 | white shirts, | " | 1 35 ..... | 32 40 |
| 9 | " " | " | 1 37½ ..... | 12 37 |
| 24 | " " | " | 1 79 ..... | 40 80 |
| 24 | brown " | " | 1 42½ ..... | 34 20 |
| 36 | under " | " | 50 ..... | 18 00 |
| 7 | white " | " | 1 65 ..... | 11 55 |
| 60 | under " | " | 50 ..... | 30 00 |
| 36 | " " | " | 50 ..... | 18 00 |
| 30 | " " | " | 45 ..... | 13 50 |
| 70 | pair drawers, | " | 27 ..... | 19 25 |
| 12 | under shirts, | " | 50 ..... | 6 00 |
| 18 | " " | " | 62 ..... | 11 25 |
| 4 | " " | " | 1 00 ..... | 4 00 |
| 18 | pair shirts and drawers, | " | 1 25 ..... | 22 50 |
| | 6 p'r shirts & draw'rs, | sold for | 1 30 ..... | 7 80 |
| 113 | 6 " " " " (red) | " | 1 62½ ..... | 9 75 |
| | 9 " drawers, | " | 1 00 ..... | 9 00 |
| 13 | pair shirts and drawers, | " | 1 35 ..... | 17 55 |
| 21 | " " " " | " | 47½ ..... | 9 97 |
| 11 | " " " " | " | 1 00 ..... | 11 00 |
| 10 | " " " " | " | 37½ ..... | 3 75 |
| 34 | " " " " | " | 1 65 ..... | 56 10 |
| 18 | " " " " | " | 45 ..... | 8 10 |
| 14 | " " " " | " | 1 15 ..... | 16 10 |
| 11 | " drawers, | " | 35 ..... | 3 85 |
| 9 | " shirts, | " | 60 ..... | 5 40 |
| 19 | umbrellas, | " | 1 12½ ..... | 21 37 |
| 60 | pair suspenders, | " | 37½ ..... | 22 50 |
| 24 | " " | " | 47½ ..... | 11 40 |
| 36 | " " | " | 30 ..... | 10 80 |
| 29 | " " | " | 35 ..... | 10 15 |
| 24 | " " | " | 37½ ..... | 9 00 |
| 24 | " " | " | 30 ..... | 7 20 |
| 4 | " " | " | 52½ ..... | 2 10 |
| 57 | " " | " | 32½ ..... | 18 52 |
| 9 | " " | " | 72½ ..... | 6 53 |
| 178 | " socks, | " | 10 ..... | 17 80 |
| 58 | " " | " | 16 ..... | 9 28 |

| | | | | | |
|---|---|---|---|---|---|
| 71 | pair socks, | sold for | 12½ ..... | | $8 87 |
| 60 | " " | " | 14½ ..... | | 8 70 |
| 8 | " " | " | 37¼ ..... | | 3 00 |
| 114 | Amount forward ..... | | | | $5,757 80 |
| | 129 linen collars, | sold for | 09 ..... | | 11 65 |
| 62 | " " | " | 05 ..... | | 3 10 |
| 70 | boxes paper collars, | " | 11 ..... | | 8 05 |
| 117 | " " | " | 13½ ..... | | 15 79 |
| 1 | pair pants, | " | ..... | | 4 25 |
| 6 | " " | " | ..... | | 1 90 |
| 1 | suit " and vests, | " | ..... | | 4 50 |
| 1 | " " " " | " | ..... | | 4 62 |
| 2 | " " " " | " | 4 50 ..... | | 9 00 |
| 1 | over-coat, | " | ..... | | 16 00 |
| 1 | coat, | " | ..... | | 6 25 |
| 1 | " | " | ..... | | 3 13 |
| 6 | white shirts, | " | 1 37½ ..... | | 8 25 |
| 2 | pair drawers, | " | 50 ..... | | 1 00 |
| 3 | " " and shirts, | " | 1 40 ..... | | 4 20 |
| 23 | " " " " | " | 1 65 ..... | | 37 95 |
| 4 | " " " " | " | 1 00 ..... | | 4 00 |
| 3 | " " " " | " | 60 ..... | | 1 80 |
| 3 | " " " " | " | 27½ ..... | | 82 |
| 2 | " suspenders, | " | 52½ ..... | | 1 05 |
| 2 | " " | " | 32½ ..... | | 65 |
| 6 | white h'dk'fs., | " | 40 ..... | | 2 40 |
| 1 | piece 6-4 cassimere, 13 yds., | " | 1 45 ..... | | 18 85 |
| 1 | " " 4½ " | " | 3 10 ..... | | 13 95 |
| 1 | lot collars and cuffs, | " | ..... | | 1 00 |
| 1 | linen coat, | " | ..... | | 1 87 |
| 3 | pair suspenders, | " | 53 ..... | | 1 59 |
| 1 | blouse, | " | ..... | | 88 |
| 115 | | | | | $5,950 30 |

116 *Exhibit D, annexed to receiver's report.—Certificate of fire insurance.*

INSURANCE ROOMS OF B. W. PHILLIPS & CO.,
*Chicago Agency of the Market Fire Insurance Company of New York, Chicago, June* 18, 1867.

——— $4,000.

This is to certify that Joseph R. Jones, marshall of the United States for the northern district of Ills., as receiver appointed by the Circuit Court of the United States for the said district, is insured against loss by fire under open policy No. 100, by endorsement thereon of this date, in the sum of four thousand dollars on [on]

clothing and gentlemen's furnishing goods, stored in the third story of the five-story brick building situate No. 187 Lake street, Chicago, Ill., his own or held by him in trust or on commission, or sold, but not delivered. Now it is hereby agreed, that from this date said insurance shall be for account of , and that loss if any shall be payable to only on the presentation of this certificate, and to be adjusted with as the holder thereof, in conformity with the conditions of said policy.

In witness whereof, the officers of said company have signed these presents, but the same shall not be binding until countersigned by B. W. Phillips & Co., their agents at Chicago.

ASHER FAY, *Act'g Pres't.*
B. W. PHILLIPS & CO., *Agents.*

N. P. FREEMAN, *Sec'y.*
[Two 5-c. U. S. rev. stamp.]

Countersigned at Chicago, this 18th day of June, 1867.

117 For value received hereby transfer interest in said insurance unto , and the Market Fire Insurance Company is authorized to adjust with and pay to , any loss that may happen to the insured property. Said insurance with this certificate terminates 3 July, 1867. Premium 11-20.

June 26, 1867. Permission granted to remove said property to the building known as Butler's auction rooms, situate Nos. 44 and 46 Randolph st., Chicago. B. W. P. & Co., Agt.

118 *Exhibit E, annexed to receiver's report.—Certificate of insurance.*

INSURANCE ROOMS OF B. W. PHILLIPS & CO.,
*Chicago Agency of the City Fire Insurance Company of Hartford, Chicago, June* 18, 1867.

No. 4528. $3,000.

In consideration of eight 40-100 dollars received of Joseph R. Jones, marshall for the United States for the northern district of Ills., as receiver appointed by the Circuit Court of the United States for said district, insurance is effected against loss or damage by fire under this certificate and accepted, subject in case of loss to all the terms and conditions embraced in the policies issued by this company, in the sum of three thousand dollars on clothing and gentlemen's furnishing goods stored in the third story of the five-story brick building situate No. 187 Lake street, Chicago, Ill., own or held by in trust or on commission, or sold but not delivered for fifteen days, to-wit, from the 18 day of June, 1867, to 3rd day of July, 1867, at 12 o'clock at noon. Loss, if any, payable to his order hereon. In witness whereof, the officers of said company have signed these

presents, but the same shall not be binding until countersigned by B. W. Phillips & Co., their agents at Chicago.

WM. E. BAKER, *Pres.*
B. W. PHILLIPS & CO., *Agents.*

119 GEO. W. LESTER, *Sec'y.*

Countersigned at Chicago, this 18 day of June, 1867.

[Two 5-c. U. S. rev. stamps.]

June 26, 1867. Permission is hereby granted to remove said property to the building known as Butler's auction rooms, Nos. 44 and 46 Randolph st., Chicago. B. W. P. & Co., Agts.

120 *Exhibit C, annexed to receiver's report.—Certificate of insurance.*

EQUITABLE INSURANCE COMPANY OF CHICAGO,
*Chicago, June,* 1867.

No. ——— $3,000.

This is to certify that Joseph R. Jones, marshall for the United States, for the northern district of Ills.; as receiver appointed by the Circuit Court of the United States for said district, is insured against loss by fire under open policy No. 100, by endorsement thereon of this date in the sum of three thousand dollars, on clothing and gentlemen's furnishing goods stored in the third story of the five-story brick building situate No. 187 Lake street, Chicago, Ill., his own or held by him in trust or on commission, or sold but not delivered. Now it is hereby agreed that from this date said insurance shall be for account of and that loss, if any, shall be payable to only on the presentation of this certificate, and to be adjusted with as the holder hereof, in conformity with the conditions of said policy . In witness whereof, the officers of said company have signed these presents.

JOHN V. FARWELL, *Pres't.*
B. W. PHILLIPS, *Sec'y.*

[Two 5-c. U. S. rev. stamps.]

121 For value received hereby transfer interest in the said insurance unto , and the Equitable Insurance Company is authorized to adjust with and pay to any loss that may happen to the insured property. Said insurance with this certificate terminates July 3, 1867. Premium 8-40.

June 26th. Permission granted to remove said property to the building known as Butler's auction rooms, known as 44 and 46 Randolph st., Chicago. B. W. P. & Co., Agts.

122 *Exhibit F, annexed to receiver's report.—Receiver's sale.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Public notice is hereby given that under and by virtue of the authority in me vested as receiver, by a decree in chancery of the Circuit Court of the United States for the northern district of Illinois,

made and entered of record on the eleventh day of June, A. D. 1867, in a cause therein then pending, wherein Charles B. Churchill, Leonard K. Smith, Lewis Friendlander, Julius Stitch, and Leopold Lithaner, are complainants, and John D. Levinson and Isaac Kempner are defendants, I shall expose the goods, wares, and merchandise mentioned in said decree, the same consisting of ready-made clothing, gentlemen's furnishing goods, and piece goods, to public sale to the highest bidder for cash, at the auction room of William A. Butters & Co., at 44 and 46 Randolph street, in the city of Chicago, in Cook county, in the State of Illinois, said sale to commence on the
2nd day of July next, at 9½ o'clock in the forenoon of said
123 day, and to continue, if necessary, from day to day thereafter, at the place aforesaid, until the whole of said goods, &c., shall have been sold.

Dated June 20th, 1867.

J. RUSSELL JONES,
*U. S. Marshal for Northern District of Illinois, and Receiver.*

124 *Voucher annexed to receiver's report.*

CHAS. B. CHURCHILL *et al.*
*vs.*
J. D. LEVINSON *et al.*

Received of J. R. Jones, U. S. marshal, northern district of Illinois, three dollars in full for moving goods from Isaac Mark's store to W. A. Butter's auction rooms.

P. QUINN.

JUNE 27*th*, 1867.
$3 00.

Circuit Court U. S. northern dis't of Illinois.

*Voucher annexed to receiver's report.*

CHARLES B. CHURCHILL *et al.*
*vs.*
J. D. LEVINSON *et al.*

Received of J. R. Jones, U. S. marshal northern district of Illinois, as receiver in the above-entitled cause, eight dollars, in full for storage of goods, from June 18th, 1867, to June 27th, 1867, 9 days, $8 00.

ISAAC MARKS.

JULY 17*th*, 1867.

*Voucher annexed to receiver's report.*

INSURANCE ROOMS OF B. W. PHILLIPS & Co.,
*Chicago, June* 18, 1867.

Mr. JAS. R. JONES, Marshal of the U. S.,
To B. W. PHILLIPS & Co., Dr.

For insurance on clothing and gent's furnishing goods, 187 Lake st., $10,000 for 15 days ..... $28 00

Rec'd payment,
B. W. PHILLIPS & CO.

[2 ct. U. S. rev. stamp.]

125 Endorsed: "Filed July 19th, 1867. Wm. H. Bradley, cl'k."

126 And afterwards, to wit, on the twenty-ninth day of July, A. D. eighteen hundred and sixty-seven, appears of record in said cause an order of reference to the clerk for computation, which order of reference is in the words and figures following, to wit:

*Order of reference to clerk for computation of amount in registry, and distribution af proceeds of sale of goods.*

CHARLES B. CHURCHILL, LEONARD K. Smith, Lewis Friedlander, Julius Stich, and Leopold Lithaner, *vs.* JOHN D. LEVINSON and ISAAC KEMPNER. } Chancery.

On motion of S. M. Moore, esq., solicitor of the complainant herein, it is ordered that it be referred to the clerk to report the amount in registry, together with costs, charges, fees, and commissions in this cause; and the clerk having made and filed his report, which is in all things confirmed, by which it appears that there is in the registry, as the proceeds of the sale of the goods by the marshal, the sum of fifty-nine hundred and fifty dollars and thirty cents; that accounts have been filed for storage and insurance of the goods, pending the litigation herein to the amount of five hundred and eighty-five dol-
127 lars, and that the taxed costs and commissions in the same amount, to wit: Marshal fees and commissions, one hundred and thirty-six dollars and thirty-seven cents; clerk's fees and commissions, to the sum of one hundred and twenty-five dollars and forty-five cents; complainant's costs for solicitor's fees and depositions, the sum of eighty dollars.

It is thereupon considered by the court, on motion of S. M. Moore, esq., solicitor for the complainants, that a check be drawn upon the registry, to his order, for fifty-one hundred and three dollars and forty-eight cents, of said proceeds; one in favor of J. Russell Jones, esq., marshal, for one hundred and thirty-six dollars and thirty-seven cents, in full, for his costs and commissions, and one to William H. Bradley, clerk, for one hundred and twenty-five dollars and forty-five

cents, in full, for his fees and commissions, leaving in the registry the said sum of five hundred and eighty-five dollars, the amount of the said bills for storage and insurance for future examination.

And on the same day, to wit, the twenty-ninth day of July, A. D. 1867, the clerk of said court filed his report, on computation
128 in said cause; which report by the clerk is in the words and figures following, to wit:

In Circuit Court United States, northern district of Illinois.

*Report of clerk on amount in registry.*

CHARLES B. CHURCHILL *et. al.*
*vs.*
JOHN D. LEVINSON *et. al.* } In chancery.

The undersigned, to whom it has been referred to report to the court the amount in the registry, together with the costs, charges, fees, and commissions, in said entitled cause, would respectfully report, that there is in the registry, as the proceeds of the sale by the marshal of the goods in custody in said cause, the sum of fifty-nine hundred and fifty dollars and thirty cents. That accounts of charges for storage and insurance of the goods have been filed, to wit:

| | |
|---|---|
| By Isaac Marks, for | $403 00 |
| And by Conrad Witkowsky, for | 182 00 |

That the taxed costs and commissions are, to wit:

| | |
|---|---|
| Marshal's fees and commissions | 136 37 |
| Clerk's " " | 125 45 |
| Complainants' depositions and docket fees | 80 00 |
| | 341 82 |

All of which is respectfully submitted.

WM. H. BRADLEY, *Cl'k.*

CHICAGO, *July* 29, 1867.

129 Endorsed: Filed July 29, 1867. Wm. H. Bradley, Cl'k.

And afterwards, to wit, on Saturday, September the seventh, A. D. eighteen hundred and sixty-seven, appears of record in said cause a further order, which is in the words and figures following, to wit:

*Further order of distribution of proceeds in registry.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Fridlander, Julius Stich, and Leopold Lathaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPSON. } Chancery.

Now come the parties by their solicitors, and the accounts for storage and insurance against the goods heretofore in custody herein having been postponed for further examination; and after the ex-

amination of witnesses, the court being now fully advised in the premises, disallows the accounts for insurance, and allowed seven per cent. of the account as charged for storage.

It is therefore considered by the court, that out of the money in the registry of the court herein there be paid to Isaac Marks the sum of two hundred and twenty-five dollars, in full for his account for storage; and to Conrad Witkousky the sum of ninety-three
130 dollars in full for his account rendered for storage; and that the balance of the proceeds in the registry herein, amounting to the sum of two hundred and sixty-seven dollars, be paid to the complainants, and that checks be drawn upon the registry to the order severally of the said Isaac Marks, Conrad Witkowsky, and S. M. Moore, as solicitor for the complainants for the said several amounts so decreed to be paid to them respectively.

On the hearing of said cause, the complainant read in evidence the following testimony, to wit:

*Complainants' testimony.*

131 Be it remembered, that on behalf of the complainants in a suit now pending in the Circuit Court of the United States in the northern district of Illinois, wherein Charles B. Churchill, Leonard B. Smith, Lewis Friedlander, Julius Stick, and Leopold Lithaner, are complainants, and Isaac Kempner, impleaded with John D. Levinson, are defendants, there appeared before me S. W. Burnham, United States commissioner for the northern district of Illinois, at the office of Moore & Corfield, in the city of Chicago, on the 6th day November, 1866, at 10 o'clock a. m., the said Moore & Corfield of counsel for said complainants, and Messrs. Goodwin & Larned of counsel for said defendant; and on application of the said counsel for the complainants, and by consent of the said parties by their counsel, I proceeded to examine Isodore Rosenthal and Samuel Simmons, witnesses to be examined on behalf of the said complainants; and I certify that at such hour and place I then proceeded to examine Isodore Rosenthal, who having been by me carefully examined, cau-
132 tioned, and duly sworn to testify the whole truth, was examined in chief by Mr. Moore, and testified as follows:

133 *Deposition of Isidore Rosenthal.*

1 q. State your name, age, residence, and occupation.

A. My name is Isidore Rosenthal; age, forty-two years of age; residence 44 North Clark st., Chicago; that is my place of business.

2 q. How long have you resided and been in business in Chicago?

A. It will be, next April, three years.

3 q. What business?

A. Clothing business.

4 q. Where did you reside before you came here?

A. In New York.

5 q. Have you any acquaintance, and if so what, with Isaac Kempner, and John D. Levinson?

cents, in full, for his fees and commissions, leaving in the registry the said sum of five hundred and eighty-five dollars, the amount of the said bills for storage and insurance for future examination.

And on the same day, to wit, the twenty-ninth day of July, A. D. 1867, the clerk of said court filed his report, on computation
128 in said cause; which report by the clerk is in the words and figures following, to wit:

In Circuit Court United States, northern district of Illinois.

*Report of clerk on amount in registry.*

CHARLES B. CHURCHILL *et. al.*
*vs.*
JOHN D. LEVINSON *et. al.* } In chancery.

The undersigned, to whom it has been referred to report to the court the amount in the registry, together with the costs, charges, fees, and commissions, in said entitled cause, would respectfully report, that there is in the registry, as the proceeds of the sale by the marshal of the goods in custody in said cause, the sum of fifty-nine hundred and fifty dollars and thirty cents. That accounts of charges for storage and insurance of the goods have been filed, to wit:

| | |
|---|---|
| By Isaac Marks, for | $403 00 |
| And by Conrad Witkowsky, for | 182 00 |

That the taxed costs and commissions are, to wit:

| | |
|---|---|
| Marshal's fees and commissions | 136 37 |
| Clerk's " " | 125 45 |
| Complainants' depositions and docket fees | 80 00 |
| | 341 82 |

All of which is respectfully submitted.

WM. H. BRADLEY, *Cl'k.*

CHICAGO, *July* 29, 1867.

129 Endorsed: Filed July 29, 1867. Wm. H. Bradley, Cl'k.

And afterwards, to wit, on Saturday, September the seventh, A. D. eighteen hundred and sixty-seven, appears of record in said cause a further order, which is in the words and figures following, to wit:

*Further order of distribution of proceeds in registry.*

CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Fridlander, Julius Stich, and Leopold Lathaner,
*vs.*
JOHN D. LEVINSON and ISAAC KEMPSON. } Chancery.

Now come the parties by their solicitors, and the accounts for storage and insurance against the goods heretofore in custody herein having been postponed for further examination; and after the ex-

amination of witnesses, the court being now fully advised in the premises, disallows the accounts for insurance, and allowed seventy-five per cent. of the account as charged for storage.

It is therefore considered by the court, that out of the money in the registry of the court herein there be paid to Isaac Marks the sum of two hundred and twenty-five dollars, in full for his account for storage; and to Conrad Witkousky the sum of ninety-three
130 dollars in full for his account rendered for storage; and that the balance of the proceeds in the registry herein, amounting to the sum of two hundred and sixty-seven dollars, be paid to the complainants, and that checks be drawn upon the registry to the order severally of the said Isaac Marks, Conrad Witkowsky, and S. M. Moore, as solicitor for the complainants for the said several amounts so decreed to be paid to them respectively.

On the hearing of said cause, the complainant read in evidence the following testimony, to wit:

*Complainants' testimony.*

131 Be it remembered, that on behalf of the complainants in a suit now pending in the Circuit Court of the United States in the northern district of Illinois, wherein Charles B. Churchill, Leonard B. Smith, Lewis Friedlander, Julius Stick, and Leopold Lithaner, are complainants, and Isaac Kempner, impleaded with John D. Levinson, are defendants, there appeared before me S. W. Burnham, United States commissioner for the northern district of Illinois, at the office of Moore & Corfield, in the city of Chicago, on the 6th day November, 1866, at 10 o'clock a. m., the said Moore & Corfield of counsel for said complainants, and Messrs. Goodwin & Larned of counsel for said defendant; and on application of the said counsel for the complainants, and by consent of the said parties by their counsel, I proceeded to examine Isodore Rosenthal and Samuel Simmons, witnesses to be examined on behalf of the said complainants; and I certify that at such hour and place I then proceeded to examine Isodore Rosenthal, who having been by me carefully examined, cau-
132 tioned, and duly sworn to testify the whole truth, was examined in chief by Mr. Moore, and testified as follows:

133 *Deposition of Isidore Rosenthal.*

1 q. State your name, age, residence, and occupation.

A. My name is Isidore Rosenthal; age, forty-two years of age; residence 44 North Clark st., Chicago; that is my place of business.

2 q. How long have you resided and been in business in Chicago?

A. It will be, next April, three years.

3 q. What business?

A. Clothing business.

4 q. Where did you reside before you came here?

A. In New York.

5 q. Have you any acquaintance, and if so what, with Isaac Kempner, and John D. Levinson?

A. No, sir; I see Kempner came in once into my store to see Simmons. I think it was last winter. I think he came to my store, 44 North Clark st., to see Simmons, because they knew each other in California. I think he stopped there ten or fifteen minutes. I don't know how long; no longer. That is all I saw Kempner; never saw him since.

6 q. What acquaintance have you with Levinson?

134 A. Nothing at all.

7 q. Don't know him?

A. I have never been in California; he came from California.

8 q. Did you know him here?

A. I knew him here, because he bought out my store; bought me out.

9 q. What did he buy from you?

A. He only bought from me the store; gave me two thousand dollars bonus, and the goods I removed, what was in the store. I removed the goods to my store, 44 North Clark st. I paid $2,000 bonus; it was a segar store, and when I took possession of it for a clothing store, the segar store didn't fit, and I had to put new fixtures in, and everything complete probably cost between seven and eight hundred dollars. I lost that, and only got two thousand dollars from Levinson.

10 q. Did you sell the fixtures to him?

A. I gave him everything. I wanted to get out of the store.

11 q. You sold him no goods at all?

A. Not a particle; not a pin.

12 q. How did he get his goods?

135 A. He bought from my brother-in-law in New York the first goods, and then bought in some other places too.

13 q. Who is your brother-in-law?

A. Friedlander, Stick & Co. Mr. Stick is my brother-in-law.

14 q. Were you ever in his store while he was keeping it, 35 Clark st?

A. Yes, sir.

15 q. Ever examine his stock of goods?

A. Never examined it; because I have not much knowledge about them things. I know more of cutting. I attend to the cutting in the store where I am now. Simmons is the conductor of the business; he has more knowledge about it; is longer in the business than I am. The most of the time Simmons goes down to New York to buy goods. Last spring I was down and was in the place where Levinson bought the goods.

16 q. Who is Spring?

A. Spring was in my store. He went off to Charleston.

17 q. What store was he in?

A. In my store.

18 q. Which one?

136 A. He was first in 44 Clark st. with me, where I am now; when I opened that store, No. 35 South Clark st., he was in there tending that store; when I found I could not do anything I sold the store out.

19 q. Sold it to whom?

A. To Mr. Levinson.

20 q. Do you know how long Levinson continued there?

A. I cannot tell.

21 q. What time was it Levinson bought it, and commenced there?

A. It was the 1st of August, 1865, when he took possession; the first or second. I don't remember exactly.

*Cross-examination.*

By Mr. Goodwin:

22 q. You say Stick is your brother-in-law?

A. Yes, sir.

23 q. Did you, on the 9th day of April, 1866, enter a complaint, and make an affidavit against John D. Levinson, and cause a warrant to be issued, and have him arrested on a charge of obtaining goods under false pretences?

A. Well, the thing was so; when I found I was down last
137 spring and I saw where he was buying goods of Beardsley, in Duane st.

24 q. Answer the question I ask you, whether you entered that complaint on the 9th day of April, 1866, and had Levinson arrested?

A. I had him arrested on account of the creditors, because I saw the thing didn't work right and I didn't want to cheat any creditors.

25 q. Do you know Louis Friedlander?

A. Yes, sir; he is a partner of my brother-in-law.

26 q. How long after the night you swore out the warrant did Friedlander come here?

A. He could not get ——

27 q. How long after that night did he come?

A. He came here—let me see—it takes from New York two nights. I cannot tell exactly; he came right off. Supposing you leave New York to-night (Tuesday) you are here Thursday. It takes two nights and a day and a half to come from New York here, and he came right off.

28 q. How did he come to start?

A. Because I telegraphed to him John D. Levinson had
138 sold out, and the goods were removed. What shall I do? He says, keep track.

29 q. You need not answer anything but the question. How long did Louis Friedlander stay here?

A. A couple of days.

ISIDORE ROSENTHAL.

Subscribed and sworn to before me this 6th day of Nov., 1866.

[SEAL.] S. W. BURNHAM,
*U. S. Com'r Nor. Dist. Ill.*

And I further certify that the said Samuel Simmons having been by me carefully examined, cautioned, and duly sworn to testify the whole truth, was examined in chief by Mr. More, and testified as follows:

139 *Deposition of Samuel Simmons.*

1 q. State your name, age, residence, and occupation.

A. My name is Semuel Simmons; my age, twenty-nine years; residence, No. 115 North Ontario st., Chicago; and occupation, merchant tailor, at 44 North Clark st.

2 q. What acquaintance, if any, have you with the parties to this suit? Churchill and others are the plaintiffs.

A. Churchill I know, and Mr. Lipe is a personal friend of mine; Friedlander, Stick & Co. I know for years.

3 q. You know the defendants, John D. Levinson and Isaac Kempner; and if so, how long have you known them?

A. Levinson I only got acquainted with here in the city. This was in July, 1865, before he bought the lease and fixtures, 35 South Clark st., about a month before that. Kempner, I know him this last ten or eleven years.

4 q. Where did you know Kempner?

A. I knew him in California.

5 q. Have you seen him here?

A. I saw him here when he first came from California; he came over to 44 North Clark st.; came over to see me and a gen-

140 tleman by the name of Spring.

6 q. Did you ever see Kempner afterwards in Chicago?

A. I met him once on Lake st., and I spoke to him, and he didn't recognise me. That is the last I saw of Kempner.

7 q. What do you know about the commencement of Levinson in business at 35 South Clark st.; when did he commence that business, and under what circumstances? State all you know about it.

A. Levinson bought the fixtures and lease of 35 South Clark st., from the 1st of August, 1865, not the goods which were in the store.

8 q. Of whom did he buy that?

A. He bought it of Mr. Rosenthal. The goods which were in the store were removed to 44 North Clark st., belonging to Rosenthal; didn't sell the goods to him at all; Levinson bought the lease and fixtures; that is all he bought.

9 q. You are positive he bought no goods at all?

A. I am positive he bought not even as much as a pin of goods; that all the goods of the store were removed, and he put in a new stock of goods.

10 q. Where did he get that stock?

141 A. He bought it in New York city.

11 q. At what time did he get that stock of goods?

A. He opened there about the 1st of August, 1865.

12 q. After he commenced there in business, from that time on to the fall, what acquaintance, if any, had you with his stock of goods, and what was the character of them?

A. The stock that he had was a very nice, clean stock of goods, and the prices were the same as the market prices.

13 q. Was the stock he bought in August and put in then, a large stock or a small one?

A. The stock was not very large. I cannot very well say how much stock he had, but it was enough to do business with.

14 q. Was you acquainted with the prices of goods that fall, and through that winter to the next spring?

A. I was very well acquainted with them.

15 q. How would the prices in the fall compare with those in the spring—the fall of 1865 and spring of 1866?

A. The prices in the fall, to my recollection, were lower at
142 that time when he bought the goods than they were a month or two afterwards. In the spring, I think, goods were a little lower than they are now.

16 q. How did they compare, say in January, March, and April, in price, and along there?

A. They were about the same.

*Cross-examination.*

By Mr. Goodwin:

17 q. Were not goods at higher price, merchant tailoring goods, in February and March, 1866, than they were in April of the same year?

A. I don't think they were.

18 q. Do you know at what prices John D. Levinson bought his goods in 1865 when he commenced business, except from what he told you?

A. From what I have seen; he bought goods at the same rate.

19 q. Answer the question. Do you know at what prices John D. Levinson bought his goods in 1865 when he commenced business, except from what he told you?

A. Yes, sir, I do; I have seen some of the bills.

143 20 q. What bills did you see and whose?

A. I have seen bills from Friedlander, Stick & Co.

21 q. In 1865?

A. In 1865.

22 q. Who else?

A. I don't remember the names but I have seen others.

23 q. Any others you can tell the names of?

A. Wynsurker & Goldsmith, 108 Broadway, New York, and St. Aronson. I am not sure, but I think to my knowledge I have seen one bill of John D. Davis but I cannot tell.

24 q. Do you pretend to know all the persons from whom John D. Levinson bought any goods when he went into business, and from July, 1865, on till January, 1866?

A. Well, I can't tell every man he bought goods of because I didn't conduct his business, but I know a few of them that he bought of.

25 q. He might have bought goods of other persons you didn't know of, might he not?

A. That is hard to say, because I have not been in his store to conduct his business.

144 *Re-direct examination.*

By Mr. Moore:

26 q. Do you know whether there were any second-hand goods in the store or not?

A. To my knowledge I know there was none.

*Cross-examination resumed.*

By Mr. Goodwin:

27 q. Do you pretend to say you knew all the goods there was in the store by inspection?

A. I think I can say so.

28 q. That there were no second-hand goods at all in the store?

A. Yes, sir.

29 q. What do you mean by second-hand goods?

A. Nothing but new goods.

30 q. What do you mean by new goods?

A. Goods that were new and always at regular rate of prices.

31 q. Was there made-up clothing in the store for sale?

A. There was made up clothing, a good deal he made up himself and bought in New York.

145 32 q. Was there in the store clothing he bought made up?

A. He bought some made up in New York city.

33 q. How do you know he didn't buy it at second-hand of some man that made it up?

A. Because I have been in the business since I was a boy, and knew whether they were new or old.

34 q. If the goods had been made up by one man and sold to another man, and that man sold them to Levinson, would you call them second-hand goods or not?

A. I call second-hand goods goods that are worn once, and another thing old stock; I call that second-hand; but the goods Levinson had I know to my knowledge were all new fresh goods.

35 q. What you mean by second-hand goods is goods that have been worn once?

A. And old stock.

36 q. Do you know who Levinson bought his ready-made clothing of, that he had in his store in July and August, 1865?

A. I do know.

37 q. You do know?

146 A. Most of the goods he bought, ready-made clothing, I do know.

38 q. Was you present when he bought them?

A. I was not there in the city.

39 q. I ask you if you were with him when he bought them?
A. I was not in New York when he bought them.
40 q. Do you know who he bought them of of your own knowledge?
A. I do.
41 q. How do you know it?
A. Because I have seen the bills, and I have seen——
42 q. Do you know the handwriting of the bills?
A. Yes, sir.
43 q. Can you swear whether the bills were made by the parties or not?
A. Yes, sir.
44 q. Which ones?
A. Friedlander, Stick & Co.?
45 q. Was there any ready-made clothing bought of Friedlander, Stick & Co.?
A. Yes, sir.
46 q. Do you know who Friedlander, Stick & Co. bought them of?
A. They manufactured them themselves.
147 47 q. Do you know whether they ever bought any ready-made clothing?
A. They never buy any ready-made; they manufacture themselves.
48 q. When Levinson bought ready-made clothing of Friedlander, Stick & Co., you don't call that second-hand?
A. I call that first-class goods.
49 q. Suppose he bought them of Simmons or Rosenthal & Simmons, would that be the same thing as buying them of Friedlander?
A. I think it would.
50 q. Suppose Simmons & Co. made them up and then he bought them of you, would that be the same?
A. I think it would.
51 q. Do you know how long these clothes had been made up that he bought of Friedlander, Stick & Co.?
A. All I know about it is they were all fresh goods.
52 q. Answer the question. Do you know how long the goods had been made up that he bought of Friedlander, Stick & Co.?
A. I could not tell to a day or week, but I know almost when they they were made up?
54 q. Was you present when they were made up?
148 A. I know I bought of the same goods.
55 q. Answer the question. Do you know when the goods he bought of Friedlander, Stick & Co. were made up?
A. It was made up three or four months before he bought them.
56 q. How do you know?
A. I was in New York when they were made up.
57 q. You saw them made up?
A. Yes, sir, I saw them made up.
58 q. All the pantaloons, and all the vests, and all the coats that he had bought of Friedlander you saw made?

A. Not all, but most of them; could not say I saw every piece.
59 q. Where were they made up?
A. New York city.
60 q. What part of New York city?
A. In Warren street.
61 q. What quantity was there in value?
A. I don't know the quantity, but I know most of the stock was bought of Friedlander.
62 q. Where was it made up?
A. In Warren street.
63 q. You was there and saw it made up, the major part of the stock he had?
149 A. Part of the stock I saw made up.
64 q. How large a part?
A. Most of the stock I have seen.
Q. You saw it made up?
A. Yes, sir.
65 q. How long would it take to make up that stock?
A. I can make up a stock like that in a week, if a man wants to, and less time.
66 q. You stayed then a week and saw it?
A. I don't say I saw every piece, but I saw most of the stock.
67 q. You stayed there and saw it made up for a whole week, did you?
A. I had been in New York two or three weeks, and I made it my headquarters there. I did not see every piece come in.

By Mr. Moore:

68 q. What sort of a house is the house of Friedlander, Stick & Co.?
A. It is one of the first-class clothing houses in New York.
69 q. A jobbing house, or a wholesale house?
A. Wholesale house altogether.
Q. How do they sell, generally?
A. They sell only the finest clothing there is made up; sell
150 a good deal to California.

SAMUEL SIMMONS.

Subscribed and sworn to before me this 6th day of November, A. D. 1866.

[SEAL.]

S. W. BURNHAM,
*U. S. Com'r Nor. Dist. Ill.*

And the further examination of the witnesses on the part of the complainant was then and there adjourned until the 22nd day of November, 1866, at 10 o'clock a. m., at the same place, pursuant to which adjournment there appeared before me and said counsel Charles Lansing and Abraham D. Titsworth, as witnesses on behalf of the said complainant.

And I further certify that the said Charles Lansing having been

by me carefully examined, cautioned and duly sworn to testify the whole truth was examined in chief by Mr. Moore, and testified as follows:

*Deposition of Charles Lansing.*

151 1 q. What is your name, age, residence and occupation?

A. My name is Charles Lansing; my age is thirty-six years; I reside in Chicago, 226 Washington street; my occupation used to be a detective. I am a private detective now. I used to belong to the detective force here.

2 q. Do you know the parties to this suit, any of them?

A. Yes, sir; I know them. I suppose it is the party I was implicated with; that I arrested.

3 q. Which of the parties do you know?

A. Mr. Levinson and Mr. Kempner.

4 q. Do you know any other of the parties—Churchill or any of them—Friedlander?

A. Yes, sir.

5 q. Who?

A. I saw Mr. Friedlander once when he came up and released Mr. Levinson.

6 q. Who arrested Levinson?

A. I did.

7 q. Who took care of him, or held him while he was in custody?

A. I did.

8 q. How long was he in custody?

A. He was in custody with me for two days.

152 9. q. During the time he was in your custody, did you hear any conversation between Levinson and Kempner?

A. Yes, sir; I did.

10 q. State what that conversation was.

A. The first conversation they had was down on the corner of Randolph and La Salle streets, in the basement of the "Sharp Corner" restaurant, they called it. We came in there. I and Levinson and Kempner was sitting there, and he called me up to take a drink of beer. I was sitting a little away and they commenced to talk about the sale—Levinson and Kempner—and I heard Kempner say, "Shall I get the bill of sale entered or not?" John Levinson answered, "Ask that fellow there; he might know more about it than I do." He came over to me, or I moved up to him, and I said, "What is the matter; what do you want of me?" Levinson said to me, "It is about the clothing; he wants to know about the bill of sale." I said I didn't want to have anything to do with it at all; "Ye ask a lawyer about it." That was at the time we were

153 there. Then Kempner said, "My bill of sale is good enough; I paid the full amount, one hundred cents on a dollar." I told him, "If you have done that nobody can do anything about that clothing to replevin;" and Kempner said, "Let them replevin; I will get two dollars for every dollar." I said, "If you have got a bill of sale you paid one hundred cents on a dollar, you have got the

thing." Kempner said, "Let them replevin, I will get two dollars on a dollar." I said, "You have got a clear thing if you have got your bill of sale at one hundred cents on a dollar." I said then "I thought Levinson told me you only paid fifty-five cents on a dollar; you must have two bills of sale." He said, "That is not your business; that is a thing that don't belong here at all;" and laughed at me. That was the whole of the conversation that we had there that I remember.

11 q. Had you any knowledge of the sale and removal of those goods from No. 35 south Clark street?

A. Yes, sir; I had.

12 q. State what you knew about it.

154 A. I came in there the same morning when they made the sale, when they packed the goods to be removed, before they removed them, and I asked the clerk, "Are you selling out?" and he said ——

(Objected to.)

13 q. Who was there?

A. Kempner and the clerk in the store.

14 q. Anybody else present?

A. Nobody else I saw; didn't see anybody else; there might have been, but I didn't see them. I asked them if they were going to sell. He said, that was the new boss, pointing to Kempner. Kempner turned his back to the door and didn't look at me at all. I went out then and went down. I should not tell what the clerk said?

15 q. Tell what he said in the presence of Kempner.

A. I went out when Kempner was in the store, and the clerk said, "There will be a lot of creditors from New York, and they will get a good smack."

16 q. Did he name any of the creditors?

A. Yes, sir; he named Mr. Friedlander and Beardsley & Brother, on Lake street, and I went down myself and told them.

(Objected to.)

155 17 q. You went down and told them what the clerk said?

(Objected to.)

A. Yes, sir.

18 q. Did you ever hear any conversation between Levinson and Kempner at No. 77 Lake street?

A. Yes, sir.

19 q. State how it was, and how that conversation came to take place.

A. I and Levinson went down, when I had him under arrest, to No. 77 Lake street—Kempner's store; that was about a note that Leopold in the next door had against Levinson. Then they commenced again to talk about clothes, and I heard them speak about California. I said, "You and Kempner are old acquaintances." He said, "We knew each other in California." Kempner asked Levinson to go and see his lawyer if he should get the bill of sale entered or not, and Levinson told him to do that himself, or go to some lawyer. Then I told Kempner, "Well, you may know any way when

he went to New York; you shall have the goods when he came back.'' Kempner told me to keep my mouth shut, and I should not
156 lose anything by it. Those were the words, I should not lose anything by it.

20 q. Who was present at that last conversation?

A. There were Kempner and Levinson and I.

21 q. Did you see any one else there?

A. I didn't see any one. There was no one there that I could see.

22 q. Were those conversations that you heard in German or English?

A. English, and some of them in German; down in Reiback's were some of them in German, and some of them in English, and down in Lake street some of them were in German too. I understand German as well as I understand English, and better too.

*Cross-examination.*

By Mr. Goodman:

23 q. At the time of the first conversation was that at Eibeck's?

A. At Eibeck's.

24 q. How long had you had Levison under arrest at that time?

A. I had him from nine o'clock the evening before until the next forenoon at eleven o'clock; that was at eleven o'clock.

25 q. When you were at No. 35 Clark street on the morn-
157 ing of the sale, were there any wagons at the door—express wagons?

A. I guess there were. I guess there were different wagons outside.

26 q. Had the goods been partly put into the wagons at that time?

A. Not at that time.

27 q. What were they doing?

A. Putting them in boxes.

28 q. Were the goods all put in boxes?

A. No, sir; not when I was there.

29 q. How many were put in boxes?

A. I could not tell you.

30 q. Were they taken down and put on the counters?

A. Yes, sir; and the curtains were down.

31 q. What was Kempner doing?

A. I could not tell you; I don't know. He was up in the rear of the store, right up behind the rear of the store. I was only in there about two seconds. I had a pair of uniform pants left there.

32 q. You just stepped in there?

A. Yes, sir.

33 q. Was Burke near the door?

A. He was just inside the door.

34 q. Kempner was in the rear of the store?

A. Yes, sir.

158 35 q. How deep is the store?

A. I guess the store is about thirty-five feet deep.

36 q. When you had the conversation at No. 77 Lake street, was it in the basement?

A. No, sir.

37 q. Where was it?

A. The first floor.

38 q. Whose store?

A. I guess it is Kempner's; I don't know. Kempner stopped there and had his goods there, but I don't know whose store it is.

39 q. It was in the store?

A. It was in the store.

40 q. Don't you know that store was occupied by another party?

A. I do not know.

41 q. How long had he been under arrest there?

A. Two days; that was the second day.

42 q. You say you know Friedlander?

A. I saw him when he came there there that evening.

43 q. Did you release Levinson by his direction?

A. Jack Green, the superintendent of police, released him.

44 q. Was it by Friedlander's direction?

A. Yes, sir; Friedlander gave a statement on the back of the warrant, and he was released?

45 q. You said that in the first conversation that Levinson
159 told you that Kempner gave fifty-five cents on a dollar?

A. Yes, sir.

46 q. How long before that was it he told you?

A. That was at the same time. He didn't tell that to me; he told it to Levinson, and I heard it.

47 q. He said he gave fifty-five cents on a dollar?

A. He said he had given fifty-five cents on a dollar.

48 q. It was in the same conversation?

A. Yes, sir.

49 q. That he said he had given fifty-five cents on a dollar?

A. He didn't say it to me.

50 q. He said it in your presence?

A. Yes, sir; that is the reason I told him he had two bills of sale.

By Mr. Moore:

51 q. Have you been in Chicago since the arrest of Levinson, and if not, where have you been?

A. In Europe.

52 q. When did you return to Chicago?

A. Saturday, a week ago.

CHARLES LANSING.

160 Subscribed and sworn to before me this 22d day of November, A. D. 1866.

[SEAL.]

S. W. BURNHAM,
*U. S. Com'r Nor. Dis. Ill.*

And I further certify that at the same time and place the said Abraham B. Titsworth having been by me carefully examined, cautioned, and duly sworn to testify the whole truth, was examined in chief by Mr. Moore, and testified as follows:

161 *Deposition of Abraham D. Tittsworth.*

1 q. What is your name, age, residence, and occupation?

A. My name is Abraham D. Tittsworth; I am about 50 years old; I reside in Chicago, and am in the clothing business—merchant tailor; have been in the clothing business nearly all my life.

2 q. How long have you been in the business?

A. Sixteen years.

3 q. Did you examine the lot of goods sold by John D. Levinson to Isaac Kempner, and placed in the basement of No. 77 Lake street?

A. I examined a lot of goods there said to come from that direction.

4 q. Will you give your idea of the character of those goods?

A. Well, sir, the goods were a promiscuous lot of goods—a part of them seemed to be new stock, and part of them seemed to be old stock; that is, stock that had been on hand some time. You can tell that generally from the style and material, style, cut, material, &c. I examined those goods as thoroughly as I could under the circumstances, and arrived at what I regard the fair value of those goods, as they were situated and appeared.

162 5 q. What proportion of these goods were new and what old, would you say?

A. As the goods were situated it was quite difficult of course to arrive at that thing anything like accurately; but I should judge from the best opportunity I had to judge of the goods, that perhaps not very far from one-half of the goods were new goods or goods of recent make—recent manufacture. Perhaps not quite one-half; I should say one-half in value, perhaps, but perhaps not one-half in bulk, goods that were recently manufactured.

6 q. When was that?

A. That was some time last spring. I don't know I could give you the date correctly. It was last spring; I think, perhaps, in May, the fore part of May perhaps, somewhere the latter part of April or fore part of May,

7 q. Taking the new goods first, suppose those goods, the new part of them had been bought in March at New York, at the market price, what would they be worth in Chicago about the eighth or ninth of April if sold for cash altogether?

A. Of course there was no depreciation upon the goods purchased in March between that and the 24th of April. Goods would

163 be regarded as worth as much last April as any time in March.

8 q. Take such of the goods as were bought in New York or Chicago in August, 1865, what would they be worth?

A. Well, if the goods were in the same condition as when purchased the depreciation would be but little; but in a stock of goods such as we handle, where they are all in an assortment of sizes and a

remnant of those goods remain with a broken size and broken lots there would be a depreciation, a considerable of a depreciation. When goods are purchased they are purchesd usually with a full assortment of sizes, and when a fall's trade is taken out of a lot—of course there would be—the lots would become broken and remnants would be left; and it would not be as valuable as though they were nicely assorted, and of course there would be a considerable depreciation in that respect if nothing in the fabrics themselves, though from August to April 1865, there was some depreciation in the stock itself. The lots could have been bought somewhat cheaper in
164 April than in August previous, but not much depreciation; perhaps five per cent. or something like that.

9 q. Could you give any figures that would indicate the depreciation on account of the lots being broken?

A. No. I don't know I could give what would be a fair depreciation of lots broken, because not knowing the situation when purchased I only know the situation of them when I examined them. I could not say how the goods ware purchased, whether at a fair price or in what quantities they were purchased.

10 q. Suppose they were all purchased new in New York?

(Objected to because it is supposing what is not in the case necessary.)

11 q. He can give his statement on any hypothesis he chooses.

A. I don't hardly think I could answer that question, that I could give anything like an intelligent answer to that question, from the fact that I don't know how the goods were purchased, in what size lots, whether there were fifty or twenty coats, and how the assortment of sizes may have originally been. I know when I ex-
165 amined them the sizes were broken. In scarcely any lot of goods I examined was there anything like what we call a regular assortment of sizes. We have a rule by which we purchase clothing or manufacture it. I manufacture all my own clothing; and I have a rule by which I make up a lot of goods, so many sizes of one kind and so many of another, and so many another, which goes to constitute a lot of goods. After a lot of goods is used through one season what remains of the lot, as a general rule, of course will be broken sizes, that is there will be too many of one and not enough of another to make up anything like a fair assortment of goods. In purchasing such a broken stock of goods of course we would expect to purchase them for what they were worth as they were situated.

12 q. Were the goods so situated you could get to see them well?

A. No, sir; the goods were not so situated we could get at every article well; so we could even get at lots well, of the different lots; not so we could get at them well, but I could get one garment of every lot, and the way in which I invoiced or estimated the value of those goods was I would take one garment of a certain lot and would
166 see how many garments there were in that lot as near as I could as the goods were situated. I didn't know whether I could get the entire lot or not, but would look around and get together all of that lot I could and then I would see how that lot was situated,

how many sizes. The value of the goods depended on the assortment in that lot, and I took that plan in this case to get a lot of goods and estimate the value, would take a coat and see how many coats there were in that lot and then see what the assortment of sizes to make them merchantable were, and I would estimate the value accordingly. I might remark here, if it is proper, in taking up any garment and estimating the value of that garment as an individual garment is very different from estimating a lot of garments for merchandizing of the same with the same goods made in the same way. For instance, if there was a lot of a dozen coats and there were three of those coats of 34-inch breast and three of them 40-inch breast and three of them 42-inch breast, we would consider that an irregular lot of goods, and if we purchased that lot would purchase them as they were,
167 without having an assortment of sizes running from 34 up to the largest number. That is the rule in our business.

13 q. Between those dates would the piece goods have depreciated and if so, how much?

A. The piece goods in this particular lot of goods I regarded as of fair value as anything in the lot, to take them as a whole. Some of the goods were depreciated, and others of them were not so much depreciated. Some of them worth 100 cents on the dollar, as at the time they were purchased but few, perhaps, like that. Some of the cassimeres may have been carried over from the last year, but the piece goods were perhaps as near the value as any part of that stock of goods, and they were in a better condition every way.

14 q. At whose instance had you gone over to examine the goods?

A. At the instance of the parties purchasing them.

15 q. Kempner?

A. The man that bought them and David Witkowsky, and also I believe Mr. Goodwin was there. I think they came in together if I remember right.

*Cross-examination.*

By Mr. Goodwin:

168 16 q. Will you state how long you was in examining those goods; was it a long or a short time?

A. I think I spent—I don't know I can tell you exactly. I think I spent the last part of one day there. I don't exactly remember what time I went, or what time I left, but I was there, I think, several hours at least; I don't remember exactly how long.

17 q. Did you have an invoice on the goods?

A. Yes, sir.

18 q. At the time, and compared the invoice prices of the goods that you examined with the goods themselves?

A. Certainly. That is the only way I could arrive at it.

19 q. Did you find many of those goods, or some of them appearing to be shop-worn?

A. Yes, sir; there was some of the goods that were shop-worn,

that were not in a good condition, of course; there was a promiscuous lot of goods.

20 q. That would be an indication that they had been kept some time, would it not?

A. Yes, sir; goods would not be likely to be much shop-worn unless they had been on hand some time; but some men will keep stock in a better condition than other men.

169 21 q. Were there some of these goods that appeared to be remnants, some of the piece goods?

A. Some of the piece goods had been cut from; I hardly regard them as remnants. Usually most of the piece goods were in good-sized pieces. What we call remnants is such a piece as you could only get a certain kind of garment out of.

22 q. Did you examine all these piece goods?

A. Pretty much all of them, I think quite. Where there is an amount of several yards in a piece, we don't regard it as a remnant.

23 q. You would not regard two or three yards as a remnant?

A. Yes, sir; two or three yards.

24 q. You would regard two or three yards as a remnant?

A. Yes, sir.

25 q. Did you find there also a good many summer coats or summer goods?

A. I did not a large quantity. There was some summer garments.

26 q. Some furnishing goods?

A. Yes, sir; some furnishing goods, shirts, and an assortment of furnishing goods.

27 q. Generally, this stock was such a one as would go into the more common retail shops for the sale of clothing, was is not?

170 A. It was a general stock of clothing and furnishing goods, such as are usally kept.

28 q. Not as high priced as you, in your business, can sell and do sell?

A. Some of them were, but very few.

29 q. As a general thing they were for the supply of a cheaper class of customers, were they not?

A. As a whole they were; but there were some very good goods.

30 q. But you say very few?

A. Comparatively few.

31 q. In the purchase and sale of such a stock of goods, as an article of merchandise, about how much percentage must the retailer make on his goods generally to save and cover his time, expenses, taxes, interest, etc., to make a profitable business?

A. That depends very much on the size of his business, upon what amount of business he does.

32 q. Well, take the amount of from fifteen to twenty thousand dollars of stock; I speak of a man that does business on that scale; about how much percentage would be required?

A. As a general rule, in my business——

33 q. I don't ask you about your business.

A. If a man can make on a stock of goods of $25,000, a man ought to do a business of at least four times the amount of his
171 average stock; it would make a business of about $100,000, and a man that does that, and makes an average profit of 25 per cent., it ought to be a fair paying business.

34 q. For the purposes of trade and merchandizing and selling out again, take that stock of goods as you examined it. How much would it be worth as a percentage upon the whole stock, upon the invoice which you examined, taking into account all considerations; how much per cent. on the invoice prices, taking that stock as a whole purchase for cash, for the purpose of merchandise, for reselling, how much could he afford to give?

A. I made an estimate upon that stock of goods, upon what I regarded its intrinsic value.

35 q. How much was that?

A. I think those goods—I don't say they would be worth it to me, but worth it to a man dealing in that class of goods—I should think to take the whole stock together, my estimate was it was worth in the neighborhood of seventy-five cents on the dollar on the invoice prices. Some of the goods were invoiced high, and others, I thought, were invoiced—we could only judge of that from our stand-
172 point—the invoices, as a whole, I regarded not very much out of the way.

36 q. Then you state that as the intrinsic value of the goods. Now, taken in reference to the chances of the market at that time, for the purposes of merchandise, and to sell out, would any man have to give 75 cents on a dollar for those?

A. It is owing to how he was situated, and whether he wanted the goods. I regarded the goods were worth 75 cents on the dollar, and what one man might consider he could afford to give would be.

37 q. Whether he could or not would depend upon other circumtances?

A. Whether he could make advantageous or not would be entirely on how he was situated. A man carrying on a blacksmith's business could not afford to give fifty cents on a dollar, if he didn't understand the business; but any merchant in that kind of trade and understood the business, could afford to give more.

38 q. Here is a man starting a business to pay cash down and take those goods as they run, new and old, fashionable and unfashionable, and furnishing goods and summer goods, and the winter goods
173 left there on the ninth of April to resell them; would the goods be worth 75 cents on the dollar in the market?

A. Well, as near as I could estimate them, there were a good proportion of those goods that were seasonable for any season, winter or summer. It is true, a very large proportion of the stock were winter goods, what we would call fall and winter goods; but such things as black frock coats or black pants, and that kind of goods are seasonable at all seasons; they sell at all times. The stock would be called, as that stock was situated, rather a fall stock of goods, and would be worth more in September than in April, no doubt of that.

39 q. I ask you in reference to reselling that broken assortment. You say there was a broken assortment, do you not?

A. Yes, sir.

40 q. Taking it as the stock was, do you regard those goods as valuable to a man to resell at over 55 cents on the dollar?

A. Yes, sir; if a man understood his business, he could make a good profit at 55 cents on the dollar.

41 q. You make a good profit?

A. Yes, sir; I make a good profit on my goods.

174 42 q. Don't you make a profit of over twenty-five per cent on your goods?

A. No, sir; not on an average. I speak of the average. Some of the goods I make a great deal more, and some less.

43 q. How extensive is your trade, your stock, and capital invested in that business?

A. I carry a stock usually of about eighty thousand dollars. I guess my stock would average from 65 to $80,000.

44 q. Do you purchase sometimes on a credit?

A. I purchase pretty much all on credit.

45 q. How many months do you buy on?

A. Usually four, and sometimes six months.

46 q. Without interest, is it not?

A. Yes, sir; without interest. In answer to your question in regard to the value of 55 cents, I only say a man could make a little better profit on that promiscuous lot at 55 cents than he could to buy an entire new stock. But to purchase a stock at cash for the purpose of making money, taking, as is usual the case, where persons desire to sell out in lots for cash, why, of course, it is never expected that the full market price should be paid. When I say sev-

175 enty-five cents on the dollar, I put that as the intrinsic marketable value of the goods. If a man has a stock of goods, and wishes to go out of the business and sell out, it is always expected that a man will purchase such a stock of goods at a less rate than in the market, or he would not buy such a stock.

47 q. If he takes a promiscous stock like that, he must necessarily be able to get it at prices much below the market price, in order to make it a profitable business?

A. That is supposable. Of course a man would take his money and buy new stock, if he could not do better than by purchasing an old stock of goods; a man would not, of course, want to take an old stock of goods at the same price he would have to pay for the same in the market.

*Direct examination resumed.*

By Mr. Moore:

48 q. In this estimate, what per cent. would you say new goods, bought in market, ought to be sold, or should be sold for, and what per cent. on the invoice price should the holder of the goods have?

A. That would be difficult to say. I estimate the new
176 goods to be not quite one-half of the stock, not near one-half of the stock in bulk, but perhaps in value nearly one-half. Those goods purchased were worth as much in April as in May; but there was quite a large lot of furnishing goods in this lot of goods, that were very much depreciated. Some of them I would not give ten cents on the dollar. There was a lot of gloves that were spotted and shop-worn and damaged, and worth nothing comparatively. That I had to estimate with the whole stock. Taking these depreciated goods, there were shirts bought at high prices, and had fallen in market, and were in a bad condition, and I estimated the stock as best I could. The new goods I estimated at being worth what they were purchased for, or at least being worth as much when I invoiced those goods, or examined them, as when they were purchased. They were purchased, I believe, in the fore part of March, and I examined them in April, and those goods had not depreciated in value—were worth as much as they were purchased for, if purchased at fair prices. Those goods I put down at one hundred cents, or worth the same intrinsically as they were. The furnishing goods,
177 the shop-worn goods and broken lots, I would not take them as a whole over about fifty cents on the dollar. That was my estimate, taking the furnishing goods and all together. The broken goods and furnishing stock is the worst lot of goods we have anything to do with. Gloves, for instance, that are depreciated are of very little value. Then I took those better goods, and that is what I proposed to state, if it is proper. I took the new goods, and a certain portion of the piece goods, and I called them worth what they were purchased for, and my impression was that some of them were not badly purchased. The other stock I put not to exceed fifty cents on a dollar, and then just made the difference, and called the whole worth seventy-five cents on the dollar, supposing they were very near equal in amount in dollars and cents.

49 q. If you were mistaken about the proportion of new and old goods, that would change your figures to some extent?

A. Well, it might be to some extent, but I think there could not be very much difference in the value in dollars and cents between the old and the new.

178 *Cross-examination resumed.*

By Mr. Goodwin:

50 q. You say that some of these goods you think were well purchased, and that others of them, in you estimate, were badly purchased?

A. One or two lots were spoken of in particular, that I thought were invoiced too high.

51 q. I speak of the new goods.

A. I mean the new goods. I make all my own goods, and judge from what similar goods would cost me to manufacture. I manufacture them in New York. I thought they were purchased high, and

others I considered purchased very reasonable indeed; and as a whole, taking the bill together, I don't consider it very much out of the way.

52 q. From February, 1866, to March, 1866, were not that kind goods, gloves and cassimeres, falling in the market?

A. Very little; that is only one month.

53 q. From March until April was there not a falling in the market?

A. Not to make very much difference in estimating the stock of goods.

54 q. Go back to the first of January, 1866, and up to March, was there not, up to March and April a continued depreciation
179 and falling in the market?

A. From the first of February up to April next year?

55 q. No; of the same year, 1866.

A. In that class of goods, I should not regard that as a depreciation. There was a slight depreciation and slight falling off of goods from January up to about the first of April, but that is usually owing to the season of the year. Almost every season of the year that thing occurs, from Jan'y to April. After the fall trade is over, goods can be purchased a little cheaper; and when the spring trade begins, the trade will stiffen.

56 q. From the first of April to the first of May, how was that?

A. There was a slight depreciation, and that depreciation has almost continued.

57 q. Ever since?

A. Pretty much ever since.

58 q. By depreciation you mean a slight falling in the market?

A. Yes, sir. The market changed, but not of such a character as would make a very great difference in the estimate of a garment.

180 By Mr. Moore:

59 q. You speak of gloves and such things that were spotted there. How much would that amount to in the value of this stock?

A. Not much; but still there was shirts and gloves and neckties, and other things in the furnishing department, some almost worthless and others very much depreciated, as is always the case in a stock of goods of that kind; and furnishing goods is the worst of the whole of them. I could not give you anything like the value; the invoice will show that.

A. B. TITSWORTH.

Subscribed and sworn to before me this 22d day of November, 1866.

[SEAL.] S. W. BURNHAM,
*U. S. Com. Nor. Dist. Ill.*

[Revenue stamps, 22nd November. S. W. B.]

181 *Certificate of commissioner.*

And I further certify that the preceding depositions, taken on the application of the complainants in the aforesaid case, pending in chancery in the Circuit Court of the United States for the northern district of Illinois, wherein Charles B. Churchill and others are complainants and Isaac Kempner, impleaded, is defendant, were reduced to writing by me and signed separately by the said Isadore Rosenthal, Samuel Simmons, Charles Lansing, and Abraham B. Titsworth, in my presence, the said witnesses having been each of them, before the taking of the said depositions, respectively duly cautioned, examined, and sworn by me to testify to the truth; and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand and seal this 22d day of November, A. D. 1866, at the city of Chicago, in said district.

[SEAL.] S. W. BURNHAM.

Filed March 15, 1867. Wm. H. Bradley, cl'k.

[Revenue stamps. 22nd November, 1866. S. W. B.]

182 *Further examination of Charles Lansing.*

Charles Lansing, at the subpœna of the defendants, reappears for further cross-examination:

53 q. In your direct examination, in reply to direct interrogatory number 18, which is, "Did you ever hear any conversation between Levinson and Kempner, at No. 77 Lake street," you relate a conversation which you say took place at No. 77 Lake street, in Kemper's store; and in your answer to the 41st interrogatory you say that this conversation occurred on the second day of the arrest of Levinson. State whether any one else except Kempner and Levinson and yourself were present at such conversation, and if so, who.

A. Well, no one I remember of; there was not any one. It is so long a time I could not say for sure; I don't believe there was any one else there. When we left, I and Levinson, I could not say for sure if Witkowsky came down or not. That was after we had the conversation. I know there was no one else present but us three that I know of, that I can remember sure; it is so long since

183 that I cannot remember exactly.

54 q. There was no one present but Witkowsky, and you have no recollection if he was present?

A. No.

55 q. You say in answer to 37 and 39 cross-interrogatories, that this conversation was on the first floor of the store where Kempner had his goods; state in what part of the store you stood at the time of the conversation you have detailed in your direct examination.

A. On the right hand side of the store, about five steps inside of the door; the right hand side of the store at the counter; there are two counters, one on each side of the store—at the right hand counter.

56 q. How near to you did each of these parties, whom you say was present, stand during such conversation?

A. Standing all together; I was just standing at the side of Levinson.

57 q. Was any one in the store at the time of such conversation besides Kempner and Levinson; and if so, whom?

A. I don't believe there was; I couldn't tell; I don't know. I don't think there was.

58 q. How long did the conversation occupy; and did it
184 occur in the morning or afternoon of said day?

A. In the forenoon, about ten o'clock; it took about ten minutes.

59 q. You say, in answer to the 51st direct interrogatory, that you have been to Europe since the arrest of Levinson. When was it that you went and how long did you stay?

A. I went to Europe the first of June, and stayed until the 15th day of September.

60 q. Did you take any one with you on your trip to Europe; and if so, who was it?

A. I took my wife with me.

61 q. Was the woman whom you took with you your wife?

A. Yes, sir.

62 q. Had you not a wife living at that time at Rochester, N. Y.?

A. No, sir.

(To last two questions counsel for plaintiff objected.)

63 q. When did you return to Chicago after said trip to Europe?

A. Well, I couldn't tell the day. It was the forepart of the middle part of October; I couldn't tell the day.

185 64 q. From whom did you first learn that this suit was pending after your return?

A. From Mr. Berry. He told me to meet at Moore's office; that Moore wanted to see me; he didn't say for what.

65 q. Have you had any conversation with Mr. Asay about this case?

A. Yes, sir; I have.

66 q. When was it, and where?

A. I had a conversation on the—let me see—yes, sir; I had a conversation up in his office. He met me on the street and told me I should come to the office. He asked me a few questions about the case; I couldn't remember what the questions was.

67 q. He met you on the street and took you up in the office?

A. He told me to come to his office, and the next morning I came there.

68 q. Was this before or after Mr. Berry came for you to go to Judge Moore's?

A. That was, I guess, that was before; I couldn't say for sure whether it was before or after. It was about the same time, the same day; I don't know whether it was before.

186 69 q. This, you say, was before, but could not be certain?

A. I don't know whether it was before or after.

70 q. Which office did you go to first, Mr. Asay's or Judge Moore's?
A. Mr. Asay's.
71 q. Did you go to Judge Moore's the same day?
A. Yes, sir.
72 q. Or the following day?
A. The same day.
73 q. But Asay had seen you and requested you to come on the day before?
A. It was the same day I came to Asay's I went to Moore's office.
74 q. But you say that the previous day Asay met you in the street, and told you to come the next day to his office?
A. Yes, sir.
75 q. By whom have you been employed in Chicage during the last two or three years, and for what business?
A. Employed by the city as a detective.
76 q. As a detective?
A. Yes, sir; detective police.
77 q. How long were you employed by the city?
A. I don't remember.
78 q. You can state, I suppose, whether it was a year or a month?
A. Yes, sir; I can state that. I know it was more than a
187 year; I don't remember how long.

CHARLES LANSING.

Subscribed and sworn to before me this 5th day of Feb'y, 1867.

S. W. BURNHAM,
*U. S. Com'r Nor. Dis. Ill.*

Endorsed: Filed March 13, 1867. Wm. H. Bradley, cl'k.

188 Be it remembered, that on behalf of the complainants in a suit now pending in the Circuit Court of the United States in the northern district of Illinois, wherein Charles B. Churchill, Leonard B. Smith, Lewis Fridlander, Julius Stick, and Leopold Lithaner are complainants, and Isaac Kempner, impleaded with John D. Levinson, are defendants, there appeared before me James S. Ely, United States commissioner for the northern district of Illinois, at the office of Moore and Corfield, in the city of Chicago, on the 7th day of November, 1866, at 10 o'clock a. m., the said Moore and Corfield, of counsel for said complainants, and Messrs. Goodwin & Larned, of counsel for said defendants, and on application of the said counsel for the complainants, and by the consent of the said parties by their counsel, I proceeded to examine Robert S. Wilson and E. G. Asay, witness to be examined on behalf of the said complainants, and I certify that at such hour and place I then proceeded to examine R. S. Wilson, who, having been by me carefully examined, cautioned, and duly sworn to testify the whole truth, was examined in chief by Mr. Moore, and testified as follows:

189 *Deposition of Robert S. Wilson.*

1 q. What is your name, age, place of residence, and occupation?

A. My name is Robert S. Wilson; I am 54 years of age; I reside in the city of Chicago; I am am an attorney-at-law.

2 q. Will you state what acquaintance you have with the parties to this suit? and in that connection you may go ahead. State any connection you have with this suit, and with the parties thereto, in connection with this matter in controversy, that you have had with this suit, and all that you know about it.

A. Soon after, or immediately after, I cannot say when, a man by the name of J. D. Levinson was arrested, as I understood, in behalf of certain creditors, of whom he had purchased goods in New York. Messrs. Wilson & Asay were employed by Levinson, and retained by him to defend him against that prosecution, and were paid a retaining fee of $500 by Levinson. Soon after that, as I understood,

190 while Mr. Levinson was still in custody—I never having, up to this time, myself seen Mr. Levinson—a gentleman then a stranger to me, whom I learned to be Mr. Kempner, one of the parties to this suit ——

(Mr. Goodwin, on behalf of the defendant, Kempner, objects to any testimony as to what took place, if anything, between Mr. Kempner and the witness in their office.)

A. Came to the office of Wilson and Asay, and first spoke to Mr. Asay, who was occupied at the time; and Mr. Kempner said he desired to ask some questions; and he spoke to Mr. Asay; and Mr. Asay being occupied, I think he was referred to me. He wished to ask some questions with reference to a purchase of goods that he had made from Levinson a short time before. He then stated to me that he had purchased a stock of goods from Mr. Levinson at 55 cents on the dollar of their original cost, and had paid him the money at that rate. I think he said that Levinson was then under arrest; that the New York creditors were present here, whom Levinson had

191 purchased the goods from, and had arrested him. That some of the creditors of Levinson were then here in the city; that he expected they would be around to see him very soon to know the terms of his purchase from Levinson; and he wanted to know whether he should tell them. No—one moment—that he had receipted to Levinson for the bill of goods at the original cost of the goods in New York, instead of 55 cents on the dollar, which he actually paid.

3 q. Do you mean that he had receipted, or that Levinson had receipted?

A. Well, the idea communicated to me was, that the papers or receipts passing between him and Levinson showed the payment, by him, of the full amount, instead of 55 cents that he paid, and he wanted to know whether he had better, when these creditors should come to him, tell them the actual amount that he had paid or not. I said to him, "By all means tell them the truth." That, I believe, is the substance, or as near as I can remember, the conversation that occurred at that time between Kempner and myself.

4 q. Have you been the attorney of, or counselor for, the complainants in this case?

A. Soon after this conversation Levinson was released from
192 custody. Mr. Frildlander, of the firm of Frildlander, Stick & Co., and some gentlemen whose name I now disremember—an agent for Churchill & Co.—all of them, Frildlander, Stick & Co., and Churchill & Co., being creditors of Levinson's, came to our office; that is, to the office of Wilson & Asay, and retained us as counsel, to pursue, so far as we could consistently with our employment by Levinson, the goods then in possession of Kempner, purchased from Levinson—to pursue them in payment of their claim against Levinson for the goods. And I acted in that capacity, as assistant counsel, until notified by Judge Moore, one of the counsel for the New York creditors, that, in consequence of testimony given in the case by Mr. Kempner, he would be obliged to call Messrs. Wilson and Asay as witnesses in this case; when we notified Judge Moore that, in that event, our connection with the case, as counsel, must at once cease; and we so notified by letter the creditors of Levinson in New York; and I said that all our connection in the case, as counsel, had ceased.

5 q. Did Kempner come to you with a message from Lev-
193 inson, and state that Levinson had sent him there, and say that Levinson wanted to know whether he should alter the bill of sale, and make it 55 per cent. on the dollar, or leave it standing just as it is?

(Objected to.)

A. No, sir.

Q. Did you ever have with Kempner any other conversation than the one that you have detailed, upon the subject-matter in controversy here, at any time, either before or after the suit commenced?

A. Never, unless it may have been casual remarks; never anything pertaining to the case.

Q. If he had asked you any such questions as that which he says he did in his deposition —

(Objected to as improper.)

Q. If he had ever brought any such request as the one alluded to in my former question, from Levinson to you, would you not now remember it?

(Objected to.)

A. I think I should.

Q. Had you, up to the time that Kempner came to see you
194 there, ever had any conversation with Levinson about this matter?

(Objected to.)

A. Never; I had never seen him.

Q. Have you ever seen Kempner in your office since the conversation that you refer to?

A. Never to my recollection.

*Cross-examination.*

By Mr. Goodwin:

Q. About what time was that retainer of Wilson and Asay by Friedlander and Co., in reference to the sale and delivery of the goods?

A. I cannot now state the precise date, and have particular recollection of the precise day of that retainer, but it was after Levinson had been released from custody.

Q. How many days was it, and what time was it after the payment of the $500 retainer?

A. Well, several days after, but the precise number I cannot tell.

Q. During the same week was it not?

A. That I cannot tell, I cannot tell whether the $500 was paid on Friday or Saturday, or what particular time it was paid.

Q. Do you not recollect that that $500 was paid on Tuesday,
195 the 10th day of April?

A. I don't recollect the day it was paid.

Q. Through whom was it paid?

A. That I don't know; It was not paid to me.

Q. Can you ascertain from your books when the retainer was paid by Levinson, and also by Friedlander and Co.?

A. Well, I think so; I can ascertain within a day or so of the time that we were retained by Friedlander; the money paid by Levinson having been paid to Mr. Asay, and not to myself, I cannot tell the day on which it was paid.

Q. It was while Friedlander was in the city, before he returned to New York on that occasion?

A. Before he finally returned to New York.

Q. He didn't come here twice and go back, did he?

A. I have an impression that Friedlander came to town and went away out of town, and came back again, and it was before he finally returned to New York.

Q. After that retainer by Friedlander and Co. in behalf of himself and other creditors, did Levinson confess the judgment of Friedlander, Stich & Co.?

A. He did.

196 Q. Where was that confession drawn?

A. I think it was drawn in our office.

Q. Did he confess the judgment also of Churchill & Co.?

A. He did to most of the New York creditors.

Q. Were they all also drawn in your office?

A. Not all of them; the greater part of them were; but some of them were drawn in Judge Moore's office.

Q. Were those upon which the creditor's bill was subsequently filed drawn in your office? (The creditor's bill here combines the two firms of Friedlander, Stich & Co., and Churchill & Co.)

A. I think so; yes, sir; those confessions were drawn up in our office.

Q. When was your attention first called to the conversation between

yourself and Kempner which you have referred to in your direct examination?

A. Since Kempner's testimony given a few days since in this case.

Q. How long was Mr. Kempner in the office on that occasion?

A. Well, I should think from 15 to 20 minutes.

(Mr. Goodwin, on behalf of the defendant, Kempner, here
197 enters a general objection to the whole testimony of Judge Wilson, and gives notice to the opposite party that a motion will be made to expunge it from the record.)

*Direct examination resumed.*

By Judge Moore:

Q. Did you in that conversation with Kempner, in reply to a question and request of his from Levinson, say, "Yes, sir; tell him to alter it, by all means?"

(Objected to.)

A. Never, sir.

(Mr. Goodwin objects to the testimony on the ground that the whole testimony given is improper; and for the further reason that the statements sworn to as to the conversation between the witness and Mr. Kempner were made at the office of Wilson and Asay, and between Wilson and Asay and Kempner, when he had applied to them for legal advice, and in the capacity of counsel, and pending the application of Kempner to them to act as his counsel, which was not then finally determined, as appears by the testimony of the witness
198 itself.)

R. S. WILSON.

Subscribed and sworn to before me this 7th day of November, A. D. 1866.

JAMES S. ELY,
*U. S. Com.*

And I further certify that I then further proceeded to examine the said E. G. Asay, on behalf of the said complainants, who, being duly examined, cautioned, and sworn by me to testify the whole truth, was examined in chief by Mr. Moore, and testified as follows:

199 E. G. Asay appearing before me, and having been duly examined and cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth, his examination was conducted by consent, as follows:

*Deposition of E. G. Asay.*

Mr. Goodwin appearing on behalf of the defendant, Kempner, and Judge Moore on behalf of the complainants.

1 q. What is your name, age, place of residence, and occupation?

A. My name is E. G. Asay; I am 40 years old; I reside in the town of Hyde Park; my occupation is attorney-at-law.

2 q. State your acquaintance with the parties to this suit, and your connection with the matters in controversy here to-night.

A. I know Mr. Kempner slightly; I know Mr. Friedlander, having seen him twice; the other parties I have no personal acquaintance with, except Mr. Levinson, for whom I acted as attorney in certain charges which resulted in his arrest and discharge. Levinson had been arrested upon a charge with which Friedlander, Stick and Co. had some interest. After his arrest—the morning after—I was directed to call upon him at the police station; which I did,
200 and there received a retainer to take charge of the matter to procure his discharge, either that or the subsequent morning, I am not certain which; my better impression would be that it was the same night, I am not certain that matter. It was subsequently to the night of the arrest, and the issue of the original writ upon his arrest. After his discharge Mr. Friedlander and a gentleman whose name I don't know, representing one of the New York creditors, called at our office, either at that or a subsequent interview; they had Levinson with them. We were then retained by the New York creditors, by these gentlemen for themselves and for other New York creditors to assist in following the goods that had been sold by Levinson to Kempner. Suits were commenced at law, followed by this bill in chancery. Since that time the matter, so far as our office is concerned, has been mainly in the hands of Judge Wilson. In fact, I think I have had no connection with it; yes, I did appear once, and subsequently, in the absence of Judge Wilson, appeared before the United States Court upon a motion to dissolve the injunc-
201 tion in this case, more to explain the possession of the retainer from Levinson than to discuss the merits of the case, during the absence of Judge Wilson.

3 q. What is the present connection of your firm with this case?

A. We have withdrawn from it, sir.

4 q. Whilst Levinson was in custody, did Kempner ever come to your office with any message from Levinson?

(Mr. Goodwin objects to the question and to all interviews that took place between Mr. Kempner and Mr. Asay in the office of Wilson and Asay.)

A. My impression is that I was in the office, but I am not certain about that as to the time. I should think that about that time Mr. Kempner did come to the office, and that I referred him to Mr. Wilson; but whether it was while he was under arrest or not, I am not certain.

5 q. When he came, did he tell you that Levinson had sent him there, and that Levinson wanted to know from you whether
202 the bill of sale of the goods should be altered, so as to make it appear 55 cents on the dollar, instead of 100 cents on the dollar, or anything to that effect?

(Mr. Goodwin objects to the question as to its form, as improper; and also as to all testimony called out by it, as also improper.)

A. All I recollect of that matter is, that at or about the time of Levinson's being in custody—it may have been directly afterwards,

or at the time—he called, and for some reason or other, I have no definite recollection now what, I told him to communicate whatever he had to say to Judge Wilson, or whatever he had to ask. Whether he claimed to be sent by Levinson, I have no recollection; what the question he wanted to propound was, I have no recollection of.

6 q. Do you remember at all what he did say to you at that time?

A. I don't, sir.

7 q. Did you ever have any other conversation with Mr. Kempner about this matter?

(Objected to.)

203 A. Whether at that time or subsequently to that, I don't know; but I did have a brief interview with him in the office. My impression is that it was not at that time, but I am not certain, by any means; beside that, I had a very brief conversation with him at my house, and also walked with him once part of the way, whilst going from my office; whether in the office I had any conversation with him in reference to the matter, I don't now know; my impression is that I did not on this last named.

8 q. Did you ever, at any time, send for Kempner and request him to employ you or your firm in this matter; in this controversy?

(Mr. Goodwin, in behalf of the defendant Kempner, objects that the question is evidently pointed to evidence brought out upon the cross-examination by the complainants, to which he, the defendant, had not had his attention called, and is, therefore, improper evidence on the part of the complainant; and also, as being, if anything, tending to impeach the witness upon a collateral matter.)

204 A. I never did, directly or indirectly; on the reverse, Mr. Kempner, upon two different occasions, offered me a retainer, once at my office and once at my house. The first, at my office, I declined politely, possibly not so positively as to shut out, should Levinson consent to the employment, the practicability of our being employed, or the possibility of our being employed; but I declined the retainer at that time. He also had a meeting at my house—

(Objection to the evidence last given as not called for by the question, and for the same reasons before stated, and as immaterial and improper in the case.)

9 q. Did you, whilst Mr. Levinson was a prisoner, meet Mr. Kempner on the way to the post office, or on your way home, and his way to the post office; and is that the time that you speak of that you met him on your way home?

(The same objection as before by Mr. Goodwin.)

A. Yes, sir.

205 10 q. During that interview with him, did you request Kempner to come to your office; that you had something of importance to tell him; and then, did he go to your office the next day, and then and there, did you ask him, "Are you a Mason?" and he replied, "I am;" and then did you say, "If that is so, I want to talk to you on the square, now;" and then, did he say, "Well, go ahead, and talk away right now;" and then, did you say, "Do you want to get any more stock of the same kind?" and then, did he say,

"I would like to if I can, but I have spent a good deal of money, and my means are very limited;" and then, did you say, "If I had known of you a week ago, you are the man I want to see; if I had known—why I have known $150,000 worth of stock bought in New York, and brought here without being unboxed or opened at all?" And did you further say: "I have not much time to talk to you about it now; come here again and I will talk over the matter with you?"

(Mr. Goodwin, on behalf of the defendant, Kempner, here
206 enters an objection of the same as before, and also to the form of the question, as leading, and, in that respect, improper.)

A. I never had such a conversation in form or substance.

11 q. Did you, either in that or any other conversation, ask Kempner, "Where do you live?" and did he reply, "On the corner of 12th street and Michigan avenue;" and did you say, "That is just on my way, and we can walk there together;" and then, did you request Mr. Kempner to call down that night; and did he ask you, "What for?" and did you reply, "Come down here, and we will go down town and have a drink with Mr. Lansing, and we will see if we can give Mr. Levinson a chance to sneak off—to get away—to slope off?"

(Mr. Goodwin, on behalf of the defendant, Kempner, enters the same objection as before in all respects; and also, not only in substance, but in form.)

A. As to that conversation, I remember that Mr. Kempner
207 and I did walk towards my house; that is, at that time of that walk, Levinson had been discharged.

12 q. He had been discharged at the time of that walk that you speak of?

A. My impression is that I did ask Mr. Kempner—he caught up to me and I had been to the post office—where he was living; and he told me, "With Mr. Witkowsky—one of the Witkowskys." Whether he said that that was at the corner of 12th street and Michigan avenue, I don't know. I don't know to this day where he lives, or where he lived then; but I certainly never invited him down town or any where else with me to drink. Nor did I in any way, directly or indirectly, propose to get an opportunity for Mr. Levinson to escape. I never had any conversation with him with regard to Levinson's escape in any way.

13 q. Well, now, Mr. Asay, did you have any other conversation with Mr. Kempner? and if so, state what it was?

(Objection by Mr. Goodwin for the same reason as before, and on the ground that the witness Mr. Kempner, stated nothing
208 with regard to this upon his cross-examination; that it is not proper for them to impeach him, and that Mr. Levinson was not called to testify to any conversation of this character.)

A. At that conversation with him at my office, whether in one of the interviews I have spoken of, I don't know, but my impression would be that it was at that time that he came in, and I directed him over to Judge Wilson. He made some allusion to a retainer which I had received from Mr. Levinson, and of his former acquaintance with Mr. Levinson in California; and with Mr. Levinson's wife; that

"he had known him as connected with a gambling-house in California, and that he had advised Levinson to break with his pockets full; that he was a smart fellow, and he guessed he took care of himself." That, I think, is about the substance of it. This conversation, it is my impression, was at the same time that I directed him over to Judge Wilson.

(Mr. Goodwin here objects to the last part of the answer as uncalled for by the question; and as improper and immaterial.)

209 A. He made this allusion to the wife of Levinson as to her former position in society in Oregon, if I am not mistaken.

14 q. To what did he refer when he said that he had advised him to "break with his pockets full?"

(Mr. Goodwin here objects for the same reasons as before stated.)

A. I suppose, at the time he referred to Levinson's conduct with his creditors. But I had avoided all interviews with Mr. Kempner in reference to Levinson's matters.

15 q. Did you ever have any other conversation more than this that you have referred to?

A. None that I recollect of.

16 q. After this suit had commenced and this process had been served upon Kempner, did Kempner come to you, and then have a conversation with you, and propose to employ you; and if so, what took place at that time?

A. Yes, sir; that was the interview at my house, in which I then stated to him that I could not take his retainer.

17 q. That was after this suit was commenced?

A. Yes, sir.

210 18 q. At the time that you speak of, did you know that you had then been retained by these New York creditors?

A. I don't know, sir.

19 q. Was there anything said between you, or by him to you, that would indicate any knowledge of the fact on his part?

A. No, sir.

20 q. Did, or did not, Levinson and Kempner come together to your office after this suit had commenced, and have some conversation with you about this matter, and if so, what was that conversation?

(Mr. Goodwin interposed the same objection as before.)

A. I don't recollect now such an interview, sir.

(Mr. Goodwin, on behalf of the defendant, Kempner, here states that he declines to cross-examine this witness, on the ground that the whole testimony given is improper, and for the further reason that the statements sworn as to the conversation between the witness and Mr. Kempner were made at the office of Wilson and Asay,

211 and between Wilson and Asay, and Kempner, when he had applied to them for legal advice, and in the capacity of counsel, and pending the application of Kempner to them to act as his counsel, which was not then finally determined, as appears by the testimony of the witness itself.)

E. G. ASAY.

Subscribed and sworn to before me this seventh day of November, 1866.

JAMES S. ELY,
*U. S. Com'r Nor. Dist. Ill.*

212 *Certificate of commissioner.*

And I further certify that the proceeding depositions taken on the application of the complainants in the aforesaid case pending in chancery in the Circuit Court of the United States for the northern district of Illinois, wherein Charles B. Churchill and others are complainants, and Isaac Kempner, impleaded as defendant, were reduced to writing by me, and signed separately by the said R. S. Wilson and E. G. Asay, in my presence, the said witnesses having been each of them before the taking of the said depositions respectively, duly cautioned, examined, and sworn by me, to testify to the truth, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand and seal this 6th day of November, A. D. 1866, at the city of Chicago, in said district.

[SEAL.]

JAMES S. ELY,
*U. S. Com. Nor. Dist. Ill.*

Endorsed: Filed March 15, 1867. Wm. H. Bradley, clerk.

213 Be it remembered, that on application of the complainant the in a suit now pending in the Circuit Court of the United States for the eighth circuit and northern district of Illinois, wherein Charles V. Churchill and others are complainants, and John D. Levinson and Isaac Kempner are def'ts, in chancery, I, E. S. Bartlett, a notary public in and for the city of Chicago, of Cook county, in the State of Illinois, have this tenth day of December, A. D. 1866, at the office of Moore & Caulfield in the city of Chicago, county of Cook, and State aforesaid, proceeded to examine Anson H. Lawrence as witness on behalf of the complainant in the aforesaid suit, and I certify that the reason for taking said deposition is that it was taken by consent, and I do further certify that the said witness and Moore, esq., of counsel for compl'ts, and Goodwin, esq., of counsel for def'ts, appeared before me at the said place, at 10 o'clock a. m., and that the said witness being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says:

214 *Deposition of Anson H. Lawrence.*

Anson H. Lawrence, a witness, called on behalf of the complainant, being duly sworn, was examined in chief by Mr. Moore, and testified, as follows:

1 q. Where do you live?

A. In Chicago.

2 q. What is your business?

A. An attorney.

3 q. What acquaintance have you with the parties to this suit?

A. I am not personally acquainted with any of the parties. I think that I have seen Mr. Churchill, but would not be confident however. I have seen Mr. Kempner. I know him by sight.

4 q. Do you know Mr. Levinson?

A. Yes, sir.

5 q. Will you state any conversation that you heard between Kempner and Mr. Asay?

A. I never heard any words pass between them but once. What they said then was a very few words. One morning Mr. Asay came into the office, I should think it might have been half past nine or perhaps between nine and ten. Mr. Kemper came into the
215 office. Mr. Asay had just come in, and spoke to Mr. Asay.

(Counsel for Kempner objects, to any statement of what passed between Mr. Kempner and Mr. Asay in Mr. Asay's law office, on the ground that these communications were made to Mr. Asay as counsel.

A. He spoke to Mr. Asay, and Mr. Asay and Kempner went into a back office. There were three rooms in the office; they went into the back office, and I was in the middle office. They stayed in there a few moments, not more than ten or fifteen, I should think fifteen minutes, and came out. Mr. Kempner was going towards the door, and as he got to the door, he said to Mr. Asay—I could not give the exact words that Mr. Kempner used, but I will tell you what the substance of the words were. Says he, "You see Levinson through this, and I will see you are paid." That was the substance of the words. I don't know as they were the exact words. That was all the conversation that I heard; this was just as Mr. Kemper was going out.

216 6 q. Now can you give the date of that conversation?

A. No, sir; I cannot give the exact state.

7 q. Have you any knowledge of the fact that Levinson had been arrested?

A. I knew that Levinson had been arrested; yes, sir.

8 q. Was this before his arrest or after his arrest, and before his release or after his release?

A. This was, I think, after his arrest, while he was in custody; this was before his discharge. The reason that I knew it was at this time was because I knew that immediately upon Mr. Levinson's discharge the confessions of judgment were entered in the U. S. Court, and I drew all of those up myself.

By Mr. Goodwin:

9 q. As clerk for Mr. Asay?

A. Yes, sir.

10 q. How long have you been about the office there—of Messrs. Asay and Wilson?

A. I have been on Mr. Asay's office since a year ago last May—a year and six months.

11 q. Was there any other young man about his office there?

A. There was a young Danish gentleman by the name of
217 Heegard.

12 q. Can you describe him?

A. Well, he was a short, thick-set individual, light hair, and was lame.

13 q. Do you know whether he spoke German or not?

A. Yes, sir; he spoke German.

14 q. Where is he now?

A. I don't know where he is now. The last that I knew of him I saw two letters that he had written, one to the office, and one to a friend of him; one of the letters, when he wrote, was dated in a town in New York State, near New York city. I don't remember the same; the second was dated the city of New York.

15 q. Did you ever hear any other conversation of Kempner's about this matter?

A. No, sir.

(Mr. Goodwin, the counsel for defendant, declines to cross-examine.)

ANSON H. LAWRENCE.

*Certificate of commissioner.*

And I do further certify that the preceeding deposition, taken on application of the compl'ts in a suit now pending in the Cir-
218 cuit Court of the United States for the eighth circuit and northern district of Illinois, wherein Charles V. Churchill and others are compl'ts, and J. D. Levinson and Isaac Kempner are deft'ts, was reduced to writing by me, and signed by the said——— —— in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and notarial seal this tenth day of December, A. D. 1866.

[SEAL.] A. S. BARTLETT, *Notary Public.*

Endorsed: Filed Jan'y 4, 1867. Wm. H. Bradley, cl'k.

219 UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

Be it remembered, that on the days hereinafter mentioned, I, Azariah B. Galt, a notary public, duly commissioned and qualified, for the city of Chigaco, in said district, did cause Morris G. Berk and John D. Levinson personally to appear before me at the office of Messrs. Goodwin, Larned & Goodwin, in Chicago, in said district, to testify on the part of the complainants in a certain cause depending in the Circuit Court of the United States for the northern district of Illinois, at Chicago, wherein Charles B. Churchhill, Leonard

K. Smith, John Freidlander, Julius Stich, Leopold Lithaner are complainants, and John C. Levinson and Isaac Kempner are
220 defendants.

And the said Morris G. Berk was by me, on the 1st of May, 1866, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid. I carefully examined the said Morris G. Berk, and he did thereupon depose and say as follows, to wit:

*Deposition of Morris G. Berk.*

1st int. What is your name, age, occupation, and place of residence?

Ans. My name is Morris G. Berk; am of lawful age; twenty-nine years. I have been clerk for Mr. Levinson, one of the defendants. I live in Chicago.

2d int. How long have you known Mr. Levinson?

Ans. I have known him between nine and ten years.

3rd. int. How long have you known Mr. Kempner?

Ans. About eight or nine years.

4th int. How long have you been a clerk for Mr. Levinson in the city of Chicago, and from what time to what time?

221 Ans. Five months and a half; from the first of November, 1865, to the 12th or 13th of April, 1866.

5th int. When did you first see Mr. Kempner in Levinson store?

Ans. I don't remember exactly the time; but it must be February, 1866, a month or six weeks before Mr. Levinson went to New York.

6th int. Do you know whether Kempner and Levinson were acquainted before this time? I mean before they met in the store in Chicago.

Ans. Yes, sir; I believe they were.

7th int. What time in 1866 did Levinson go to New York to purchase goods?

Ans. I believe it was on the fourth of March.

8th int. Was, or not, Kempner in Levinson's store while he was so in New York?

Ans. Yes, sir.

9th int. What, if anything, did he say at this time on the subject of Levinson's continuing in business?

Ans. We had some conversation, which I do not remember, in regard to business matter; but in regard to business, Mr. Kempner remarked that this would be the last time that Mr. Levinson would buy goods, as Mr. Levinson was not suited to that business.

10th int. What time, if you remember, did Mr. Levinson return from New York in 1866?

Ans. It must have been about the 20th of March.

11th int. What time did his goods arrive in Chicago, which he purchased at that time in New York?

Ans. The goods were coming all the time that Mr. Levinson was

in New York. From four or five days after he was in New York, they began to come. The goods had all arrived in Chicago two or three days after Mr. Levinson returned to Chicago.

12th int. How soon after Mr. Levinson returned did Mr. Kempner come into the store?

Ans. I don't remember, exactly; but it must have been between a week and ten days.

13th int. What did he say, if anything, upon the subject of purchasing the goods of Levinson at that time?

(Question objected to by Mr. Goodwin, on the ground that
223 it is of a leading character, and the question assumes that something had been said on the subject, when nothing is shown.)

Ans. I believe he made a remark at that time, that he was going to Omaha. I don't remember every word that passed between them; but Kempner said he was going to leave Chicago and go to Omaha, and if he could get a good cheap stock, he would take it along and start business there.

14th int. Did Kempner, at any time, examine these goods in the store, and if so, when, for the first time?

Ans. Mr. Kempner looked at the goods several times, and remarked that it was a good stock of goods. I don't remember the date.

15th int. Do you remember the day of the week he spoke of going to Omaha?

Ans. No, sir.

16th int. Do you remember the day of the week he examined the goods?

Ans. It was on Sunday. Mr. Kempner came in with another gentleman, and looked all over the goods. I don't know his
224 name. I understand it was a relation of Mr. Kempner. I now say it was Mr. David Adams, on his being pointed out to me.

17th int. When was it? What day of what month was it that he examined the goods on that Sunday?

Ans. I don't remember the date. It must have been the beginning of April.

18th int. Was you there at any time when an inventory was taken of these goods?

Ans. There was an inventory taken, I believe, on the following Sunday. I was there at that time.

19th int. Who else was there during the taking of that inventory?

Ans. The same gentleman that was there on the Sunday before, and a Mr. Witkousky, and Mr. Kempner, Mr. Levinson, and myself.

20th int. Was anything said during the week before the inventory was taken by Mr. Kempner, upon the subject of when he should pay for the goods if he purchased them?

225 (Question objected to by Mr. Goodwin, for the reason it

does not appear that Kempner & Levinson had any interview during the week by the testimony of this witness.)

Ans. Mr. Kempner said he would not pay for the goods unless he got them in his possession.

21st int. Did he say anything upon the subject, whether he would pay for them before or after they were removed from the store?

(Question objected to by Mr. Goodwin as leading.)

Ans. Yes, sir; he said he would not pay for them till after they were removed.

22nd int. Was you present in the store at the time the inventory was completed on the Sunday, and the parties separated and left the store?

Ans. Yes, sir.

23rd int. What then occurred if anything, in reference to the key of the store?

Ans. Mr. Kempner made a remark; he asked for the key; he said the "goods belonged to me, and I may as well have the key;" and he did take the key. I believe Mr. Levinson gave it to him.

226 24th int. Was any money paid at that time, or any note or memorandum given for the goods at that time by Mr. Kempner?

Ans. No, sir.

25th int. Do you know when the goods were removed from the store?

Ans. The next morning, the following Monday, between 8 and 10 o'clock in the morning, they commenced removing them, about ½ past eight. It took us less than three-quarters of an hour to get the whole stock out.

26th int. How were they removed?

Ans. In express wagons; they had five or six wagons. I was behind the counter handing them out as fast as I could, and they were put right on a pile on the express wagons.

27th int. Were any of the goods taxed before they were removed?

Ans. No. I don't believe they were, except some collars and fancy goods that were put in one case. The rest were taken right off the shelves and put on the wagon mixed up.

28th int. How many persons were present assisting and directing in the removal of these goods?

227 Ans. Mr. Kempner and Henry Ardler and another man a relation of Kempner and myself, and express men; there were five or six wagons and there must have been that many express men.

29th int. Where were these goods taken to?

Ans. I believe they were taken to Lake street, and put into the cellar of Mr. Witkousky.

30th int. Was Mr. Levinson there at all in the morning before these goods were removed?

Ans. No, sir; when Mr. Levinson got there the store was empty.

31st int. Was you present when anything was done or occurred in reference to the payment by Mr. Kempner to Mr. Levinson for these

goods? if so, state where and when and what occurred, and who was present.

Ans. Yes, sir; I was. I went up to Mr. Witkousky's office on Monday morning an hour or so after the goods were removed, about twelve o'clock. I saw Mr. Witkousky, Mr. Kempner, and Mr. Levinson. Mr. Levinson took out a paper and asked Mr. Kempner
228 "How shall I receipt this?" Mr. Kempner said "Receipt it in full," the way it is. Mr. Levinson did receipt it, and Mr.
229 Kempner gave him some money after the bill was receipted, but I could not say how much.

32 int. Did you or not notice whether a part of this payment was a check of Kempner on some bank?

Ans. Yes, sir; I believe it was.

33 int. What do you mean by your saying it was receipted in full? (Question objected to by Mr. Goodwin; question waived.)

33 int. Receipt what in full, do you mean by your answer to the 31st int.?

Ans. I should judge by receipting a bill in full, is receipting for whatever the bill calls for, the full amount.

34 int. Do you know how much these goods inventoried at?

Ans. I believe it was over $17,000 (seventeen thousand dollars.)

35 int. Upon what basis was the price fixed?

Ans. The New York cost price.

36 int. Do you know what price they were purchased at by
230 Kempner, and sold by Levenson to him?

Ans. I believe fifty-five cents on the dollar of the New York cost price.

37 int. At what price were they receipted to Kempner by Levinson, at the time of paying this money?

Ans. They were receipted in full of the New York cost price.

38 int. Did you hear any conversation between Kempner and Levinson, before the inventory was taken in regard to the amount of goods purchased by Levinson in New York at this time? If so, state all that was said by both parties on this occasion.

Ans. There was a conversation between Kempner and Levinson on this subject. I don't remember every word; Kempner said I wish you had bought thirty thousand dollars' worth and I would have gone in partnership with you; they were just coming forward in the front part of the store.

39 int. Was there or not at different times during this negoti-
231 ations, conversations between Kempner and Levinson, that you did not hear?

Ans. Yes, sir; there was.

40 int. Did you ever hear any conversation between Kempner and Levinson, some time after this sale was consummated? if so, state when and where it took place and all that was said?

Ans. About four or five days after the sale took place, Mr. Levinson and myself were standing on Clark street and Mr. Kempner joined us and made a remark to Mr. Levinson, if he had not sold out, or if he had waited till afternoon he would have been attached, and

also said Mr. Friedlander was going to New York that evening. He said also, if the creditors ever trouble me I will make them pay the full amount the bill calls for, the New York cost. If the creditors replevied these goods he would make them pay the full amount.

41 int. In any of these conversations between Levinson and Kempner, previous to the sale, was anything said on the subject of who the goods were purchased from or who would have to suffer?

(Question objected to by Mr. Goodwin as leading and improper.)

232 Ans. There was such a conversation between Kempner and Levinson. And I heard Mr. Kempner say, "little Coleman would have to suffer," and Levinson said he did not owe him only two hundred and odd dollars.

42 int. Have you had any conversation with Kempner since the proceeding was commenced by the creditors and the bill filed upon the subject of what Mr. Levinson ought to give you? If so, state all that was said on that subject, and when and where it took place.

(Question objected to as leading, by Mr. Goodwin.)

Ans. I don't remember that I had any such conversation.

43 int. Have you had any conversation with Mr. Kempner, since the bill was filed in this cause, as to the amount he paid his clerk when he failed, and for what he paid him? and state all he said in that connection.

(Qnestion objected to by Mr. Goodwin as improper, incompetent, and leading, suggestive to the witness, assuming what is not proved nor referred to by the witness, that Kempner ever failed at all, that he ever had a clerk, or that he ever paid him anything.)

233 Ans. Mr. Kempner said when he failed he gave his clerk fifteen hundred dollars, and also gave him a chance afterwards in business. That is all I remember. This conversation occurred after the sale and before proceedings were commenced, and I was notified to be a witness.

44 int. Where was this conversation?

Ans. It was on Lake street; Mr. Kempner and I were walking together; we had just come out of his place.

45 int. How did he come to make this remark to you?

Ans I don't exactly remember the conversation we had before he made this remark.

46 int. Was that conversation before or since these proceedings were commenced by the creditors?

Ans. Before.

47 int. Did he give any reason why he gave his clerk the fifteen hundred dollars; and if so, what reason?

(Question objected to by Mr. Goodwin as suggestive to the

234 witness, and leading, declaring the only proper question to be, "What else was said?")

Ans. I don't remember that he gave any reason.

48 int. Was it before or after the sale was made that he told you that he had given his clerk this money?

Ans. After the sale.

49 int. Was or not anything said in this conversation about keeping his clerk's mouth shut?

(Question objected to by Mr. Goodwin, as leading and improper.)

Ans. No, sir.

50 int. Was or not anything said in this conversation as to what Mr. Levinson ought to do with you?

(Question objected to by Mr. Goodwin, as leading and improper.)

Ans. I don't remember that anything was said.

235 *Cross-examination.*

By Mr. Goodwin:

1 x-int. Where were you born and raised?

Ans. I was born on the line between Prussia and Poland, and was raised twenty miles from that place, at Kalisch.

2 x-int. What time did you come to the United States?

Ans. Thirteen years ago.

3 x-int. Where did you first live in the United States?

Ans. In New York.

4 x-int. Are you a naturalized citizen of the United States?

Ans. Yes, sir.

5 x-int. When and where were you naturalized?

Ans. In San Francisco; 7 or 8 years ago.

6 x-int. How long did you remain in New York when you came from Europe?

Ans. About eight or nine months.

Adjourned to 2 o'clock, p. m., May 1st, 1866.

236 7th x-int. Where did you go to from New York?

Ans. Cincinnatti.

8th x-int. How old were you when you went to Cincinnatti?

Ans. Fifteen years.

9th x-int. How long did you remain in Cincinnatti, and where did you go to from there?

Ans. I remained there 16 months, and from there went to California.

10 x-int. What did you do when you went to California?

Ans. I went clerking at first in the clothing business, and then the crockery business, and then the segar business, as clerk.

11 x-int. How long were you in the cigar business as clerk?

Ans. 1½ or 2 years as clerk, and then I opened a cigar store for myself and was in business for myself a year or a year and a half. This was in San Francisco.

12 x-int. Where did you go from San Francisco first?

Ans. I went to China.

237 13 x-int. What business did you go to China on?

Ans. I was in the employ of the Chinese government.

14 x-int. Did you go to China as an employee, or engaged with a minstrel troupe?

Ans. No, sir. There was a minstrel troupe on board of the same vessel.

15 x-int. Had you any connection with the minstrel troupe on board of the vessel going to China?

Ans. No, sir.

16 x-int. What employment was it you had from the Chinese government?

Ans. I was tide-surveyor at Shanghai, and had charge of vessels going in and out.

17 x-int: How you come to go to Shanghai for that purpose, and who gave you that appointment?

Ans. I had a notion in my head to go to China; I had letters of introduction from San Francisco to merchants in China.

238 18 x-int. Then when you went out you had no appointment from the government, but went to see what you could do, did you not?

Ans. Yes, sir.

19 x-int. How long did you stay in China, and where did you go to from there, and when did you come to Chicago?

Ans. I staid in China 18 months; I then went to San Francisco, and staid there 3 or 4 months, and then took another trip to China, Japan, and I came to Chicago some time in October, 1865.

20 x-int. Did you come from China direct to Chicago?

Ans. No; I went back to San Francisco, and then to New York, and then to Chicago.

21 x-int. Did you go in as clerk for Levinson as soon as you came to Chicago, or what else did you do?

Ans. When I came to Chicago I looked for a store. I wanted to open a cigar store, but could not find one to suit me. It was the second day of November I went in as clerk for Levinson, two or three weeks after I came here.

239 22 x-int. Did you loan Levinson any money when you went in with him, or before or afterwards?

Ans. Yes, sir.

23 x-int. How much?

Ans. $500.

24 x-int. Has that money been repaid to you? If so, when?

Ans. It has—right after the sale.

25 x-int. Who was present in the store of Levinson, No. 35 South Clark street, on Monday morning, the 19th of April, when Kemper came after the goods?

Ans. Myself, alone.

26 x-int. How long had you been there before Kempner came?

Ans. About half an hour.

27 x-int. Was you there, by Levinson's directions to deliver the goods in the store to Kempner, according to their agreement on the day before?

Ans. That was understood the night before, that the goods
240 should be delivered the next morning. I don't remember that Levinson told me to deliver the goods.

28 x-int. Was it your understanding, from what passed the day before, that it was your duty to deliver the goods to Kempner that morning, when he should come for them?

(Question objected to by Judge Wilson, on the ground that they are not entitled to his understanding, but to what was said.)

Ans. Yes, sir.

29 x-int. About what time the day before did the parties get through the inventory you have spoken of and leave Levinson's store?

Ans. It was in the afternoon, between 3 and 4 o'clock.

30 x-int. Did David Witkowsky, jr., David Adsons, and Kempner remain there until three or four o'clock, or did they go away at dinner time?

Ans. David Witkowsky, jr., I think, wanted to go to dinner before, but Kempner wanted him to stay. They may have left the store before 3 o'clock.

241 31 x-int. Did you see Kempner on that day again before he came and found you in the store, on Monday morning?

Ans. I believe I did see him on State street.

32 x-int. When you went to the store on Monday morning, how did you get in?

Ans. Through the door; I unlocked it.

33 x-int. Where did you get the key?

Ans. I always had a key, there were two keys to the store.

34 x-int. Then, when you left on Monday, Kempner took one and you kept yours.

Ans. Levinson gave Kempner his key and I kept mine.

35 x-int. Was there any other person present except Kempner, Levinson, and you, at the time you say the conversation took place referred to by you in your answer to the 41st direct interrogatory?

Ans. I don't recollect that there was.

36 x-int. If there was any other person there you would have remembered it?

Ans. I don't recollect of seeing any other person around

242 there.

37 x-int. Was there any other person than yourself and Kempner present at the conversation referred to in your answer to the 43rd interrogatory?

Ans. There was no other person present.

38 x-int. In any of the conversations which you refer to as having taken place between Kempner and Levinson during the last week before the inventory, and to which you have testified, did Kempner, in your presence, tell Levinson if he could get more than 55 cents on the cost price of his goods from any one else, he had better sell to them, or take it?

Ans. I heard Mr. Kempner say if he could get more than 55 cents to sell them.

39 x-int. Did not Kempner at the same time claim that they were not worth more, as he received it, and gave his reasons, or some reasons for that opinion? and if so, what were those reasons?

Ans. I believe he did say that at the time Levinson bought
243 the goods that Mr. Levinson paid 10 or 15 per cent. more for the goods than the real value; that Mr. Levinson's credit was not "A" No. 1, was the reason he had to pay more for the [the] goods and to add the 55 per cent. to it he could not make much out of the stock.

40 x-int. Do you know David Witkowsky, senior?

Ans. I do, by sight.

41 x-int. Did you meet him with Kempner near the post office in this city, some time week before last, after the bill in this case was filed?

Ans. I did.

42 x-int. Did Mr. Witkowsky then ask you what you knew about the sale to Kempner by Levinson, and did you reply that you knew nothing about it, except Kempner offered 55 cents for the stock and Levinson wanted more, and that their talk about their business was all betwixt themselves, and that you did not hear it, or words
244 substantially to the import and effect of the above?

Ans. I don't remember what I have said at that time, and I did not feel like telling any one that stopped me on the street what I knew about it.

43 x-int. Do you mean to say that the conversation stated in the last interrogatory did not take place on that occasion between you and David Witkowsky, senior?

Ans. I don't remember what I have said. I was busy at the time talking with a friend. I went to talk a few words with Witkowsky, and I don't remember what it was.

(The counsel here asks the commissioner to re-read the question to the witness, and asks the witness)—

44 x-int. Will you state distinctly whether the conversation, as stated in the interrogatory, did or did not take place?

Ans. There was some conversation took place to that effect. I don't remember the exact words.

45 x-int. In the same conversation last referred to, when
245 you met Mr. Witkowsky at the post office, did you use to him the following language: "If I have anything to say or do about it, I shall take the side of them that will pay me the best," or any words, though differing from the above, substantially of the same import and effect?

Ans. No, sir.

46 x-int. Did you have an interview or conversation with Isaac Kempner, in the basement 77 Lake street, on Thursday or Friday of last week, at which Adolph Asher was present, and in that conversation did Kempner ask you to go to his lawyer and state what you knew about the sale from Levinson to him of the goods in question, and did you answer him that you would not go, and say that you had made a statement to the lawyers on the other side, and it did not amount to a snap or a row of pins, and that you did not want to be mixed up with it?

Ans. I come to the basement to see Mr. Kempner, as he

246 had asked me the day before to meet him the next day at 11 o'clock. When I got there the next day, Mr. Kempner asked me to go up to his lawyer. I told him I did not care about going to his lawyers, and that I did not want to have anything to do with it. Kempner then said I went to the other lawyers and gave my statement on the other side, and I might as well go and give it on his side. I told him I did not feel like having anything to do with the case, and all the statement I gave on the other side was to answer questions that I was asked, and that if I were subpœned, I said I did not think it would amount to much, and that if I staid here till the case came up, and they subpœned me, I would give my evidence.

47 x-int. Did Kempner, on that occasion, in the presence of said Adolph Asher referred to in the last interrogatory, ask you the following question: "What can you say against me, or against
247 the sale?" (referring to the sale from Levinson to Kempner, of the stock of goods in question,) and to that did you reply, "I can say nothing against the sale, for I don't know anything about it, because you always went aside with Levinson and talked private about your business, so that I did not hear what you were about, and I can't say anything different," or language substantially to the import or effect of the above?

Ans. I don't remember anything at all about it.

48 x-int. Do you mean to say that the conversation referred to in the last interrogatory did not occur between you and Kempner, as therein stated?

Ans. As I said before, I don't remember what was said.

49 x-int. Do you deny that the conversation detailed in 47th x-interrogatory took place, as therein stated?

Ans. I don't deny. I remember there was something said, but I don't recollect what it was.

448 50 x-int. Do you admit that the conversation detailed in said 47 x-int. took place, as therein stated?

Ans. I don't remember.

51 x-int. Can you not state whether or not, as early as last Thursday or Friday, you had the conversation detailed in 47 x-interrogatory, with Kempner?

Ans. There was some conversation with Kempner, but I don't remember what it was, not exactly as stated here, anyways.

52 x-int. On the same occasion referred to in the 46 and 47 x-interrogatories, did you not say to the said Kempner, in the presence of the said Adolph Asher, that you were out of business, and that they (meaning the parties complainants in this suit) are paying my expenses, and I can't go and make affidavit for you, or words substantially to that import or effect?

A. No, sir.

249 *Re-direct examination.*

By Judge Wilson:

1st int. Where did you know Kempner and Levinson for the last 8 or nine years?

Ans. I knew them both in California.

2 int. Did they know each other in California?

Ans. I believe they did.

3 int. Did you know, at the time that Witkowsky stopped you and asked you the question mentioned, near the post-office, that the goods in question were removed to the cellar of Witkowsky, and that Kempner made Witkowsky's office his headquarters?

Ans. Yes, sir.

4 int. Is this the young man present, Adolph Asher, that was present in the cellar of Witkowsky when you went there by invitation?

Ans. He is the young man.

5 int. Was, or not, you aware at the time you went there and met Asher there, that Asher stood by and heard all you said?

250 Ans. When I first came in I did notice him; then I saw him; he was busy putting up goods. Kempner and myself had the talk near the door. I don't believe Asher could hear what was said by us.

6 int. Was, or not, you aware at the time Witkowksy stopped you near the post office and asked you these questions, that he was trying to get testimony for Kempner?

(Question objected to by Mr. Goodwin as gratuitous, and based upon an assumption not shown in the case, and not true in fact.)

Ans. I could not tell.

7 int. Whether or not the morning after the inventory was taken, when Kempner came to the store, or at any time that morning, anything was said by you with reference to delivering the goods

251 to Kempner?

(Question objected to by Mr. Goodwin as leading.)

Ans. I remember Mr. Kempner came in and said he would be back in a few minutes and have the express wagons to take the goods out of the store. I don't think I said anything in reply.

8 int. Who superintended and took charge of the removal of the goods?

Ans. I should think Kempner did.

M. G. BERK.

And the said John D. Levinson was by me on the 18th day of May, 1866, first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid. I carefully examined the said John D. Levinson, and he did thereupon depose and say as follows, to wit:

*Deposition of John D. Livinson.*

1st int. What is your name, age, occupation, and place of residence?

Ans. My name is John D. Levinson; my age is thirty-two next month; my occupation has been merchant, not in any now; I live in Chicago, Ill.

2nd int. Do you the parties complainants and [and]
252 defendant, Kempner, in above-entitled suit; and if so, how long have you known them?

Ans. I know them all; I have known Freidlander & Co. for about 12 years; I have known Churchill & Co. since last March; I have known Kempner since 1859.

3rd int. Are you the defendant, Levinson, named in the above-entitled suit?

A. Yes, sir.

4th int. State when you commenced business in the city of Chicago, also the business you were engaged in at Chicago; state also the amount of stock which you had on hand on or about the eighth of April, 1866; when and where that stock was purchased, and about the amount of stock on hand last named; state also if any how much was your indebtedness at the time named, and the names of the parties to whom you were indebted, and state also the time when the indebtedness was contracted, and when due; state your actual condition on or about the eighth day of April, 1866, in regard to your stock.

Ans. I commenced business in the city of Chicago on the first of August, 1865. It has been the clothing, furnishing, and peice goods. On the 8th of April, 1866, I had about $17,800 00-100 of stock on hand; that stock was purchased in the month of March, 1866, or the greater portion of it. I was on the 8th day of April, 1866, in
253 debt about fifteen thousand dollars. I was intebted to Churchill & Co. $1,148 00; Laroni & Co. $446; H. Schlesinger & Co. $1,706 50; C. Peck & Co. $288; George A. Davis & Co. $1,738 75; Steinhart & Co. $1,224 75-100; H. Aronson $1,202 51; Metz, Nathan & Co. $1,086 62; Birdslee & Bro. $1,437 81; Farnbaker & Co. $228 63; H. & J. Perritt, jr. $853 50; Freidlander, Steitch & Co. $3,064 13, and some smaller amounts that I owed in the city of Chicago, which Chicago debts I have paid. All of this indebtedness was contracted in March, 1866, between the 8th and 20th, except Freidlander, Steitch & Co. with them I had a running account since July, 1865. I gave notes for all of these bills, due in four months, except three; two of them were for ninety days, and one was an open account already over due; H. Aronson & Farnbaker & Co. were due in ninety days, and Freidlander, Steitch & Co. was an open account, due any time.

5th int. State now when the sale was made to the other defendant Isaac Kempner; state all the circumstances attending it, and give a detailed account of the entire negotiation for the purchase and sale between you from the beginning to the close; state all that was said

before the sale and afterwards, the circumstances attending
254 the removal of the goods; the bill of sale made, the amount thereof, the payment of the money, the receipt therefor, and all that took place in connection with the entire transaction.

Ans. The sale was made on the eighth of April, 1866. I came back from Now York about the 22d or 23d of March, 1866. I was in Chicago some few days; Mr. Kempner came in the store one day, shook hands and passed the compliments of the day, and said he was about leaving Chicago, and said he had an idea of going to Omaha to open business, and said if he could buy a cheap stock of goods he would take them up there; that was on Saturday, a week before the sale. I told him I had a pretty good stock of goods here that I would sell him, as I had a chance to go into something that would pay me better than this business just now. He said he would see, and come in to-morrow with his brother-in-law and [and] look over the goods, as he was a better judge of goods and prices than he was. On the following day he came in with David Adams, and they did look over the stock, and said he would go home and think about it, and come in to-morrow and see me. The next day he came in and offered me fifty-five cents on the dollar. I got pretty mad at that, and told him seventy cents would not buy them, and went off and left him.
255 A day or two afterwards he came in again, and we had a talk, and he said the goods were not worth more than that to him, and he had taken advice with some friends who told him that goods were not worth as much then as they were at the time I bought them, and my credit was not very good in New York, so I had to pay ten or fifteen per cent. more than any one else. He said he wanted to make something on them; he would have to sell them on credit and wait for his money. I told him it was no such thing, that I did not pay more than any one else; that he might go around town and inquire and and make himself familiar with the prices, and he could find out. I told him it did not make any difference that that money would not buy them, and I expected to hear from another gentleman in the country who wanted to go into business in Chicago, and I would probably sell out to him. I think this man lived in Springfield, Illinois, but I will not be positive; another man told me about him; Jacob Liverman told me; that ended the conversation that day. The next day, I think it was, I met Mr. Kempner on Lake street, and asked him why he circulated the reports around that he had offered me fifty-five cents, and that I was going to sell out. He said he did not circulate any reports, but he would take me in and show me a good honest man who would tell me where those reports came from. I went in with him to David Witowsky's fur store, on Lake
256 street; Witowsky said he had heard reports, but could not tell where they came from. We three stood and talked about the value of the goods. I went out after a while and went home to the store. In the afternoon Mr. Kempner was passing by, and I called him in. We had some talk there about business. He said to me, "There is some pretty rough talk in town about you, you had better not delay this matter; you had better let me have the goods, and put

the money in your pocket, and let the creditors go to the devil," or words to that effect. I told him I would not sell them for that price anyway. He said "That is my offer, and if you can do any better do it." I told him I did not see what I had to fear from the creditors; that I did not owe any one anything that was due, except Freidlander, Steitch & Co.; that was due. He said, "You had better look out for them, I know them better than you do." On Saturday we came together again, in the store, the 7th of April, 1866, it might have been Friday, but I think it was Saturday. I told him I wanted to close the trade with him. I asked him to meet me half way in the offer. I had offered them to him before for sixty-five cents; either at this time or before he had offered me fifty-five cents. He said No,
257 he would not give any more than fifty-five cents. Previous to that, I told him I would sell him the fixtures in the store. He said he would not have them if he bought the stock; that he would move the goods out of the store before he paid for them, or that he would pay for them as soon as he had them out of the store, I think the last were his words; that he did not want to have any trouble with them for fear the creditors might replevy them. We closed the trade on Saturday. I am pretty sure it was Saturday, and he said he would come in on Sunday and take stock; on Sunday morning he came in with David Witkowsky, jr., and David Adams. I was there with Mr. Berk who has given his testimony. Before we took stock, Mr. Kempner and I had some conversation; he asked me how much I owed Freidlander, Steitch & Co., and several other parties. I told him I owed Friedlander, Steitch & Co., a little over $3,000, and named over some other creditors, but I don't now remember their names, or the amounts I gave. He said "Little Coleman" would have to suffer too. I told him I did not know that; I only owed him a little over $200, and I might pay that bill. We then went to work and took stock, and in taking the stock there were some articles that were not marked, and I had to refer to some bills in the drawer, and I took them all out and laid them on the counter till I found the one
258 I needed and showed him the bill, and I think he took up some of the other bills and looked at them, but I won't be positive, but he looked at that one. I don't recollect now which bill it was; when we got through taking stock, and we were starting for home, he said, "You had better give me the key of the store so as to show that the goods are in my possession." I then gave him the key of the store, and told him I must have the money for the goods by twelve o'clock the next day. He said, you shall have it as soon as I get the goods moved. On Monday morning I came down to the store about nine o'clock, or between nine and ten, and the goods were already removed. I met him on the street, and told him I would like to have a settlement, as I wanted to pay some bills in town. He told me I could get my money as soon as he went down to the bank and got it. He came back in about an hour or an hour and a half. He said he could not get all the money then, and that he had $2,000; and he would give me the balance at three o'clock. I told him that would not suit me. I asked him if his check was not good at the

bank for the balance. He said, "Yes." We then went up stairs up to Witowsky's office, and he then paid me $2,000 in currency and a check on Henry Greenbaum & Co. for seven thousand seven hundred and something. I think it was at least the balance due on the goods. David Witkousky, senior, was officiating as clerk. He asked
259 Mr. Kempner how he would have the bill or invoice receipted. Mr. Kempner told him to have it receipted in full, as it was for the full amount. Mr. Berk was present, David Witkowsky, senior, and some one else in the back part of the office in a chair. I cannot tell now who it was, and myself and Kemper. The next day I met Mr. Kempner at Iback's restaurant, and sat down and had some talk about matters and things. He said he might want to have that bill of sale charged to deduct the 45 cents, and put the amount he paid me. I told him it could be easily done, and he had better see a lawyer. I think at that time we were talking about my affairs. He said, "They can't do you any thing; you will get out all right. I am going into business, and about three years I will give them a hoist bigger than that."

(The last paragraph objected to by Mr. Goodwin as not responsive to the question, and irrelavant and improper.)

A few days after, Mr. Berk, my clerk, and myself were standing on Clark street, and Mr. Kempner came up and said, "Mr. Freidlander is going away this evening, and if the creditors replevied them goods, he would make them pay dollar for dollar for them, and it was luck that I sold out when I did, for if I had waited till Monday afternoon, I would have been attached." That was the last conversation I had with him, that I recollect of.

6th int. At the time of the payment of the money, when
260 you state that Mr. Kempner remarked in reply to Witkowsky how he would have the receipt signed, that "he wanted it receipted for the full amount," do you recollect, in that conversation, Mr. Kempner assigning any reason why he wanted to be signed for the full amount of the inventory?

Ans. Not at that time; no, sir.

7th int. Where is the bill of sale signed at that time, in whose possession is it?

Ans. I suppose in Mr. Kempner's.

8th int. Do you recollect, in any of these conversations with Mr. Kempner, his making any inquiry of you about the amount of goods you had purchased in New York? if so, state when it was, and all that was said in relation to the amounts of such purchases.

Ans. It was before the inventory was taken, either the same day or some time before, he asked me how much goods I had bought in New York. I told him in the neighborhood of twelve thousand dollars; and he said he wished I had bought thirty thonsand, and he would have gone in with me.

9th int. What amount of the stock sold to Kempner did you buy in New York, in March, '66?

Ans. In the neighborhood of $12,000 00. I suppose I sold $400 or $500 in Chicago—between the time of the New York purchase and the sale to Kempner.

10th int. Will you state at what figure, as to the value of
261 the goods sold; was the inventory made out at the time of the sale to Kempner, according to which he purchased ?

Ans. It was made out at the New York cost, exclusive of freight and charges.

J. D. LEVINSON.

Cross-examination by def't's solicitors, Messrs. Goodwin, Larned & Goodwin, waived for the present.

*Certificate of commissioner.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss :*

I, Azariah T. Galt, a notary public, duly commissioned and qualified for the city of Chicago, in said district, and authorized by an act of Congress to take and certify oaths and affirmations in certain cases, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witnesses above named are material and necessary in the cause in the caption of the said deposition named, and that the said witnesses were about to depart beyond the jurisdiction of said court, and that the said depositions were taken before me, by consent of the solicitors of the respectives parties. I further certify, on the days aforesaid, I was attended by Hon. Thos. Hoyne and judges Wilson & Moore for the complainants, and [&] by
262 Messrs. Goodwin, Larned and Goodwin, solicitors for defendant, Kempner, and by the said witnesses, who are of [of] sound mind and lawful age; and the said witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; and the depositions were by me reduced to writing in the presence of the said witnesses; and from their statement, and after carefully reading the same to the said witnesses, they subscribed the same in my presence. I have retained the said depositions in my posession for the purpose of delivering the same with my own hand open into the court for which the same were taken, and I do further certify that I am not of counsel, nor solicitor for either of the parties to said suit, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and notarial seal this nineteenth day of May, A. D. 1866.

[NOTARIAL SEAL.] AZARIAH T. GALT,
*Notary Public.*

[5-cent int. rev. stamp, cancelled.]

Endorsed: Filed May 26, 1866. Wm. H. Bradley, cl'k.

263 On the hearing of said cause, the defendants read in evidence the following testimony, to wit:

*Defendants' testimony.*

Be it remembered that on behalf of Isaac Kempner, impleaded as defendant in a suit pending in the Circuit Court of the United States, in the northern district of Illinois, wherein Isaac Kempner, impleaded with John D. Levinson, are defendants, and Charles B. Churchill, Leonard B. Smith, Lewis Friedlander, Julius Stick, and Leopold Lithaner are plaintiffs, there appeared before me, James S. Ely, United States commissioner for the northern district of Illinois, at the office of Goodwin & Larned, No. 22 McCormick's Building, in the city of Chicago, in said district, on the 17th day of October, 1866, at ten o'clock a. m., the said Messrs. Goodwin & Larned, of counsel for the said Isaac Kempner, and Conrad Witkowsky, a witness in said cause on behalf of the said defendant, appearing before me in pursuance of a subpœna issued out of the said court, and attached to other depositions taken by me in this cause; and I hereby further certify, that on the 7th day of November, 1866, at 10 o'clock a. m., at the office of Messrs. Goodwin & Larned, the said
264 counsel appearing, I then proceeded to examine Conrad Witkowsky, on behalf of the said defendant, Kempner; and the said witness being by me carefully examined, cautioned and duly sworn to testify the whole truth, was examined in chief by Mr. Goodwin, and testified as follows:

265 *Deposition of Conrad Witkowsky.*

1 q. What is your name, age, residence, and occupation?

A. My name is Conrad Witkowsky, and am 27 years old; my place of business is at 77 Lake street; my occupation is that of a manufacturer and furrier.

2 q. Do you know the defendant in this case, Isaac Kempner and J. D. Levinson?

A. Well, I know Mr. Isaac Kemper and Mr. Levinson both.

3 q. Do you remember the time when Kempner bought out Levinson's stock of goods, at No. 35 South Clark, and removed then to 77 Lake street?

A. I do.

4 q. Previous to that time, state what you know of anything
266 of Levinson's seeking Kempner, and being desirous of selling out to him.

A. Well, Levinson came into my store several times, looking for Kempner. He was in there one day, and I got talking with him, and says I, "What are you hunting so much for Kempner for?" and says he, "I want to sell out to him." Says I, "What are you hunting him for? Why don't you sell out to Herman Adler?" and says he, "Adler hasn't got money enough;" and we were talking about the price to be paid for the goods.

5 q. What did he say, if anything, about the price he wanted to sell to Kempner for?

A. He said the price he wanted was 55 cents on the dollar, and I said I would not give him 50 cents for the stock, if I was to buy it.

6 q. Why did you say that?

A. Because I did not think taking a stock like that; and having no stand, and taking a mixed stock of goods that there would be in every retail store, without any stand, and taking the whole stock, I thought I would not give that. I could do better in every auction store.

7 q. How long was this before the sale was spoken of?

A. It must have been within one, two or three days.

267 8 q. Did Levinson state how much he was willing to sell to Kempner for, what he wanted to sell to him for?

A. Well, in the general conversation, then, it was mentioned at 55 cents.

9. q. What has been in the past your occupation?

A. Before I came into this business, I was in the manufacture and selling of clothing.

10 q. State what business you refer to, and where you are carrying on now?

A. I am carrying on the fur business now at 77 Lake street, Chicago.

11 q. How long had you been in that business, and what experience had you in the manufacture and selling of clothing?

A. Well, I was in the clothing business altogether about twelve years, making up goods and manufacturing all we sold, and also making up goods to order.

12 q. State whether or not you were in the habit of purchasing goods in New York or elsewhere.

A. Well, I purchased goods in New York for three years, and I purchased goods here.

13 q. What kind of goods?

A. Principally unmade goods, cloths, cassimeres, linings, and such things.

14 q. What experience had you in the manufacture of them?

268 A. Well, I used to trim; I never cut myself.

15 q. Did you carry on the business of making?

A. Yes, sir; I manufactured all that we sold.

16 q. Were you a salesman also?

A. Yes, sir.

17 q. Then you had been accustomed to buying and making up, and selling clothing.

A. Yes, sir; I had been buying, and making up, and selling clothing, and handling it as a man would in his own business, and as a man would in every store or shop in the business.

18 q. State what you know of the stock of goods that Kempner bought of Levinson, and brought to No. 77 Lake street.

A. Well, I looked through that stock to a considerable extent.

19 q. State to what extent and what examination you made of them.

A. The goods were all sorted out there in the basement, on the shelves, and on boxes, and in piles, and I handled a good many of them, and looked at some of them close.

20 q. What was the extent of your examination?

A. I looked pretty thoroughly the stock, and picked up one article here and there and looked through the parcels generally.

21 q. For what purpose did you do that, if any?

269 A. One purpose was to see what kind of a bargain he had bought; that was one purpose.

22 q. When was that?

A. That must have been the same week, certainly.

23 q. Are you sure whether it was the same week or not?

A. It must have been the same week, and I think the day following; it must have been the same week.

24 q. Was that examination taken upon request, for the purpose of giving your opinion about the value? and if so, state upon what request, and for what purpose that opinion was wanted.

A. Well, I looked at the stock really three or four times; at first out of mere curiosity, to see what bargain he had bought, and upon the request of Mr. Kempner after that.

25 q. What time was that?

A. That must have been after this suit was commenced.

26 q. What time was it in reference to being examined as a witness?

A. That must have been after the suit certainly.

27 q. Do you recollect that it was before the motion to dissolve the injunction in the case was made?

A. It must have been before the trial of that motion, of course.

270 28 q. Now, will you state what the character of that stock of goods was in detail, as far as you recollect it and its value? I want you to give your opinion upon the value of that—upon the cost price of that stock of goods, stating the grounds of your opinion and anything else that is a reason for it.

A. Well, for instance, there was some fine black coats there that I would consider unsalable entirely at the cost price that they cost Levinson; then there was a lot of furnishing goods there that I would consider dear at any price, because they were rubbish; then there was a big lot of white shirts there, more than any reasonable man would like to possess at what they cost; and then there was some pantaloons there that was faded down at the front, and pantaloons of light colors with streaks down the front in the folds that would be hard to sell at half; and altogether odds and ends of goods, and if I was to take them as they laid there I certainly would not have given $. 50 cts. upon the cost price.

29 q. Had you the invoices with you to examine the cost price?

A. It was there, but they showed us the mark.

30 q. You had the marks on the goods?

271 A. If I am not mistaken, I think the mark is just like my own mark is.

31 q. Were the goods marked all through?

A. All that were not marked with the price were told me from the invoices in Kempner's hands.

32 q. Would you recognize the paper if you could see it?

A. I don't remember particularly of looking at this, but I remember this writing—(exhibit it,); I have seen this writing before—this is the paper.

33 q. What quantity in proportion of that stock there was made up of clothing, and what of piece goods?

A. Well, I didn't look very closely at the piece goods, and I could not actually say; there was a good deal of clothing, I know. It was a pretty large basement and it was spread out all over; not having looked through the invoice I can't say; in fact, I have not looked through the invoice at all closely.

34 q. How was that stock of goods there in reference to newness or oldness of the stock; what proportion was there new stock lately purchased, and what was old?

A. There is a class of goods that is hardly ever old unless
272 they get manufactured and a different style of cut comes in; for instance, black coats; and there is a class of cassimers that go out of date every year; just as here, there was a lot of striped and streaked goods.

35 q. How did this stock run?

A. Just as every man's stock of goods in a retail store; what is not put off by a good business will run down and depreciate in value. I should consider this an old stock.

36 q. Do you know how recent some portions of that had been bought in New York?

A. Nothing of my own knowledge.

37 q. Well, from appearance?

A. Well, from appearance, what I saw, some of them must have been bought, I should think some of them must have been bought a year at least, because I don't think those pantaloons could have got those streaks down the front if they hadn't been there more than a year; I remember that particularly, because I saw a pair of them on a party.

38 q. If I understand you, some of them were new and some of them were old, and some of them were there more than a year?

A. Yes, sir; they were what I should call shop worn.

273 39 q. Do you know, or could you judge from appearance, anything about the price at the times these goods were purchased?

A. No, I don't know as I could; they must have been purchased at particularly high prices though, I thought.

40 q. What was the market, falling or rising, from January to February down to March, 1866?

A. I have only known of a falling market, I don't know of any rising market.

41 q. How was it from March till the middle of April in reference to the falling or rising of the market?

A. From what I could see, not being in that business at that time,

but from being around with merchants and hearing about it, I always read and heard of a decline of prices; everybody was afraid that his goods were going down and would depreciate, and that they could not get any kind of price for them.

42 q. Then from your examination of these goods, comparing them with the prices that were given to you from the cost marks, and that were stated to you, state, what in your opinion, would be a fair consideration to pay for them, for the purpose of taking them and selling them out?

274 A. I can only give my own opinion, that I would at that time have not given more than 50 cts. on a dollar; I would not now give that for them.

43 q. Without referring to what you would give, what was the market value of them from your experience at that time?

A. Well, sir, my opinion is from that, that he gave all that they were worth.

44 q. From your experience, is it your opinion that goods can be obtained at a lower price for cash than upon credit?

A. Why, certainly.

45 q. Do you, or do you not, understand that many of those goods had been purchased by Levinson in New York upon credit?

A. Well, I understand so, and I should have thought so from my ideas of the prices of the goods that they could not have been bought for cash; I certainly know so now. If Mr. Levinson wanted to sell out, the best way to sell out with the least trouble would be to put out the goods right at an auction store and sell them for cash. In that case, I feel confident that, deducting commissions and taxes on sales, he certainly would not have got 55 cts. on a dollar for them; consequently Mr. Levinson sold out well. Now, why Mr.

275 Kempner paid all that the goods were worth was this: Had Kempner bought a business stand the goods would not have been dear if he had paid 100 cts. on a dollar for them, because he could have put in new goods and have sold them all out together, and have, perhaps, made a bonus on the stock. But he didn't do that; he bought them to take them to some other place or to ship them out somewhere and retail them, and any man knows that you can't take a stock of goods like that and sell them again to retail sellers and get 55 cts. for them; but by selling them out in driblets he might possibly have got an advance of 15 per cent. And then again, if he wanted to take these goods to a retail store in order to retail them, by hard trouble and keeping them and selling them article by article, he might, perhaps, make a little money on them by good management; but it would be much better for a man to go to a wholesale store and buy what he wants at the regular price instead of having a whole lot of bad goods forced upon him with the whole stock; and for that reason he paid all that they were worth, and more than I would have paid for them; in fact the man was demented.

46 q. Do you mean, by buying out a stand, purchasing an

276 old regular custom, buying out the good-will of an establishment?

A. Yes sir, buying out the trade.

47 q. How much, about, is the usual profit which a retailer of such a stock of goods must make in retailing merchandise in order to reimburse himself for his interest and taxes and profits, &c.?

A. I could not do a retail business unless I made 33⅓ per cent. profit, and then sell goods enough.

48 q. Will you give an answer to that question, not in reference to yourself, but in reference to the general interest of a retail business?

A. Well, sir, all that I can say is that I had a geat deal of communication with retail dealers, and I never heard any body say that they could exist and make a living and get along without making at least 33 per cent profit. I don't think anybody would say so that is in the retail business; there is no retailer would be willing to acknowledge making less than 33 per cent.

49 q. What is the percentage which such a retail dealer, in order to make it profitable business, considering his own time, his expenses, taxes upon his business, interest on his capital, &c., should make?

A. 33⅓ per cent.

277 *Cross-examination.*

By Mr. Moore:

50 q. How long have you been in the fur business?

A. This is my third winter.

51 q. When did you quit the clothing business?

A. Just at that time.

52 q. How long had you been engaged in the clothing business at that time?

A. Nine years.

53 q. Here in Chicago?

A. Yes sir, here in Chicago, and in California and New York.

54 Q. What was the character and extent of your clothing business that you was engaged in here in Chicago?

A. I was engaged at that time in the manufacture of clothing here in Chicago, and I was in the wholesale business. I did the trimming myself mostly. I didn't cut any. A part of the time I was in the retail business.

55 q. How long did that continue here in this city?

A. Pretty nigh two years.

56 q. Then you have not been in the wholesale clothing business for the last five years?

278 A. I have not been in the wholesale clothing business for the last seven or eight years.

57 q. Did you know when Mr. Levinson commenced business at 35 South Clark street?

A. Not exactly.

58 q. About what time?

A. I can figure it out; I think it must be two or three years ago.

59 q. You think it is over two years ago?

A. Yes sir; about two years I should judge.

60 q. Who did business there before him in the same place?

A. A man by the name of Springer; I understand there was a man by the name of Rosenthal interested in it, but it was Springer & Rosenthal and another man. So I understand.

61 q. What kind of a business was that?

A. That I understand to have been a retail store and merchant tailoring establishment, making goods to order. I was in the store two or three times [two or three times] myself and I understand that to have been the business.

62 q. Do you know where Mr. Levinson got his stock with which he commenced there?

A. I don't.

63 q. Do you know whether it was an old or a new stock?

279 A. I don't; my knowledge of the stock is simply from what I saw of it. I never was in Levinson's store.

64 q. Some of these goods were over a year old?

A. Yes sir.

65 q. How much over a year old?

A. That is a hard matter to tell, it will be hard to tell that.

66 q. Do you think any of them were over five years old?

A. I should think from the looks of those pantaloons that they were over that; some of them were shop-worn goods and I should think were probably five years old.

67 q. You said something about furnishing goods; what do you mean by this?

A. I mean fancy ties; neck-ties, sleeve-buttons, and some breast-pins and white shirts; that is what I call furnishing goods. Under-shirts and drawers, of these there were quite a number, but they are worth money all the time.

68 q. Can you specify the number?

A. No sir; I cannot.

69 q. How as to the shirts?

A. Well, I should judge that shirts are always in sale, for that matter.

70 q. Were there any overcoats amongst them?

A. Well, there was in the springtime, and I should not be

280 likely to notice them, but overcoats were not there much among them. I don't know that I handled—I did handle some overcoats, but I don't remember many overcoats he had that time.

71 q. Who was there at the time you made that examination?

A. I think that Mr. James Mares was there.

72 q. Was there anybody else there?

A. I would not actually say there was anybody else there when I made that examination.

73 q. Are you sure that Mr. David Witkowsky was there?

A. I am sure I examined the goods some time, but when I did examine them I don't know; whether he was there during the same time that I was or not I don't know. I think he was; I don't know.

80 q. Was it in the store or in the basement you speak of?

A. In the basement.

81 q. And do you think he was there during that time?

A. Yes, sir.

82 q. How were the goods arranged there in the basement?

A. They were lying upon boxes and shelves, and the different goods were assorted and we could see them.

281 83 q. Were not a great many of them in boxes?

A. That I don't know. We didn't take any of them out of the boxes.

84 q. Do you know when Mr. Barry was there to look at the matter?

A. I have recollection of Mr. Barry being there up in my store up stairs. I have no recollection of being with Mr. Barry down stairs.

85 q. Was this time that you examined the goods about the same time that Mr. Barry was there?

A. No sir; I think Mr. Barry must have been in my store after that special view of the goods.

86 q. When he examined them were they in the same possition both times?

A. They were all there and were examined at both times, but the first time he was examining them they were separated out in the basement.

87 q. Mixed up a good deal, were they not?

A. Well, I think they were tolerably assorted so as to get at representative articles.

88 q. What proportion of the goods were faded and shop-worn?

A. They were considerable of the high-colored goods.

89 q. Considerable is a very indefinite sort of word?

A. I could not tell you how many thousand dollars' worth,

282 or I could not tell you how many hundred dollars worth; I saw two or three pairs of different kinds that were shop-worn goods and of course the rest must have been the same, because if one was so when they were sorted, the others must have been so too.

90 q. Don't merchants hang some things of that kind out of the door?

A. Yes, sir; they might have, and they might have this streak down in front; it fades I said where it happens to be facing the sun.

91 q. You speak of two or three pairs of several lots?

A. Two or three pairs of several paterns of different pantaloons.

92 q. How many different patterns do you think.

A. There must have been so many different patterns.

93 q. How many?

A. I said two, or three, or four pairs.

94 q. Did you say that there was one of each lot?

A. Yes, sir.

95 q. Those were light-colored pants, were they?

A. Yes, sir.

96 q. How many pants would there be in each of those lots?

A. I can't say how many Mr. Kempner bought.

97 q. You spoke of some black goods that were very fine; how many were there?

A. That I can't tell you.

283 98 q. Can you approximate to that number?

A. I cannot, sir.

99 q. Do you remember the price of any of them?

A. I think there were some coats there that were between 25 and 30 dollars.

100 q. What did you say about them?

A. I thought that they were very dear, much dearer coats than I would want to have.

101 q. Did you mean to say that they were not worth that money?

A. I would not give that for them.

102 q. I am talking about the market value.

A. I don't think they were worth that in the market.

103 q. Don't merchants that are dealing in that kind of goods have to keep a general assortment for all kinds of customers?

A. They generally keep an assortment.

104 q. How then about this?

A. I don't think he ever got a customer for that sort of goods. I don't believe you can find in my father's store—and he keeps as fine a stock as anybody—that you can find a better price for a coat than $21. Mr. Levinson didn't get that kind of custom.

105 q. How do you know Mr. Levinson had all these goods on credit, or else his credit was not good?

284 A. I certainly know it now.

106 q. How do you know it now?

A. From all the talk then about it.

107 q. What sort of talk?

A. Well, I heard that he had been to New York and bought goods, and the next thing I knew of, Mr. Rosenthal having him arrested for debt or something of that kind about the same day; I think so that he must certainly have been in debt.

108 q. What was his reputation here as a man of means or capital?

(Objected to.)

A. Well, his general reputation as a man of means could not have been very high or was not very high from what I heard. I understand that is wife wore diamonds.

109 q. How far back did that reputation extend?

A. It could not have extended very far back here, because I was not here very long.

110 q. Did it extend as far as back as his commencement in business here?

A. All that I know is from hearsay. I don't know anything about his reputation myself.

111 q. It is his reputation that I am asking for.

A. I heard that people were not very willing to sell him goods. I don't suppose that the man could have bought that amount of

285 goods on credit here in Chicago. Chicago merchants are sharper than the New York merchants.

(Mr. Goodwin, on behalf of the defendant, Kempner, objects to all evidence as to general reputation.)

112 q. Did you ever know Levinson before he came here?

A. I have always had a notion that I knew him, but I never was able to place it; when I saw him in the street, I thought that I could tell him, but I never was able to place it.

113 q. Did you know him in California?

A. I thought so; I thought that that was the place that I must have met him; he has got a kind of a common looking face, and it might not have been ——

114 q. Where did you know Kempner first?

A. I think in California; I might have known him in Europe, but I don't know. I think I made the first acquaintance with Kempner in California.

115 q. Do you know whether Levinson and Kempner were acquainted with each other in California?

286 A. I don't know whether they were or were not.

116 q. Is Kempner a relative of yours?

A. Yes, sir.

117 q. What is the relationship?

A. I don't know; we call it cousin, but it must be in the third degree, and it may be in the fourth degree; you must ask my father that question—I can't tell you. I could not place relationship in any other way or manner.

118 q. How will the price of goods seven years ago and now compare from five to seven years ago?

A. I guess there would be a decided difference.

119 q. A decided difference?

A. I think so.

120 q. Which way?

A. They are higher now, of course.

121 q. Did you know anything about the price of clothing in the fall; in September or August, of 1865?

A. Well, I always did keep up a general knowledge about goods; my father was in the business, and merchants were always in my store.

122 q. How did the price along in the fall of 1865 compare with the price along in March or April, 1866?

A. The way to get at that is this: Goods then were very

287 high on account of the soldier's trade. The soldier's trade made a great demand in the business.

123 q. The war was over?

A. Yes, sir; but the soldiers were coming home and goods were higher then at retail and wholesale than ever before. After that trade was done, prices went down, overcoats sold very low; Mr. Levinson must have had a very considerable number of overcoats left, and they certainly were much lower.

124 q. When?

A. When he sold out.

125 q. Then you think the goods in August, September and October, would cost more money than they would in March and April succeeding?

A. Yes, sir; that is my opinion.

126 q. Did you see any large lots of overcoats in these goods?

A. Well, as I told you, overcoats not being in vogue then, I didn't give it much attention.

127 q. Do you remember how the prices ranged through the months of February, March and April?

A. I could not specially say.

128 q. You say they were pretty high in the fall of 1865?

A. No, sir. In the months of July, August and September, on account of the soldier's trade, goods were scarce and dear.

288

129 q. How were they in November and December?

A. Goods were not selling then to any extent.

130 q. It was difficult to tell prices then?

A. Yes, sir; it was more difficult to fix prices?

131 q. How was it in January and February?

A. I understand, then, that goods were held pretty stiff in New York, but merchants here were anxious to sell.

132 q. How was it in March?

A. That was the opening of the spring trade, and, of course, goods were held pretty stiff in New York.

133 q. How was it in April?

A. I suppose they would be held on the same ratio. I would here say that my knowledge of clothing goods is merely from the retail trade and from my father's business and from hearing merchants speak about matters. There was, I know, in those months an anxiety to sell.

134 q. In which months?

A. In the late fall and in the spring of the year there was an anxiety to sell on the part of the retail dealers; they were not making anything on what they did sell.

289

135 q. Did you ever see Mr. Barry there in your father's office—at your office?

A. Yes, sir.

136 q. When was that?

A. Some time probably within ten days after the sale.

137 q. Did you see him and Kempner together?

A. Up in my office?

138 q. Yes, sir.

A. Yes, sir.

139 q. Did you hear their conversation?

A. Yes, sir. I have an idea that I saw Mr. Kempner and Mr. Barry before, but I can't say for certain. I have heard of them, and it may have got fixed in my mind that way. Whether I saw them there in the basement together I would not be willing to swear one way or the other. I can also tell you what I told Mr. Kempner in this conversation. I can tell you the advice I gave Kempner in that conversation.

140 q. Was you present when Mr. Kempner offered to let Mr. Barry or the eastern creditors take these goods if they would give him $1,500 advance.

A. I know of that, but I cannot positively say whether he was present or not; but I can only say that I advised Mr. Kempner to do it.

141 q. Was you present at the second conversation?

A. Yes, sir; because I had part in it.

290 142 q. What part?

A. It seems that Mr. Barry came up there and asked Mr. Kempner whether he would take the $1,500 then. He first offered to give him a certain advance upon Messrs. Beardslee Bro.'s goods. To take out the piece goods was, I think, his first offer. I believe Mr. Barry offered some 12 per cent. advance; it was between 5 and 12 per cent., I think. He, of course, was trying to make as good a bargain as he could. Then, I think, Mr. Kempner would have thought favorably of that if I hadn't put in then and showed him that it would not have been for his interest to do it.

143 q. What did you tell him?

A. I don't know exactly what the percentage was; but I told him at the time that it would not do if he picked out goods.

144 q. Didn't Mr. Barry form a proportionate percentage on $1,500 upon the whole?

A. Let me see. I figured the percentage, I believe. Yes, it was about that way; it was from 5 to 10 or 11½ per cent., or something in that way, and I told him it would not do upon picked goods.

145 q. Didn't he make that proposition for all the piece goods?

291 A. I don't remember. My remembrance is, that it was upon parcel and piece goods. That is my recollection of the conversation.

146 q. What per cent. did you say he ought to have?

A. I didn't say any percentage that I know of; I might have mentioned some percentage, but I don't recollect. I don't think I made any mention of any particular rate.

147 q. Kempner stated that he would not take less than $2,500 on the whole?

A. He said that he had picked them up, and was going to take them away; he was about to take them to the country, and had engaged clerks, he said. I know he had engaged one, and had been to put to extra expense, and he thought that $2,500 would not be too much.

148 q. Didn't you then express the opinion that $2,500 would be too low?

A. I don't remember; but could not have been, because I had advised him to take $1,500. Mr. Kempner was going against my advice all the time.

149 q. Didn't you tell Mr. Barry that 100 cts. on the dollar could be got out of that?

A. Certainly. I think that if I had that stock I could have made that hundred per cent.; but I don't know how long that would

292 take. You can see how that would be. I would have done it by opening a retail store, and doing a regular square retail

business, buying new goods to fill up the stock, and keeping up a retail business. That is the way I would have done it, and that is what I meant by giving him that advice.

150 q. Didn't you say, too, at that time that it could have been done by culling out the piece goods and the best clothing, and selling them profitably?

A. No, sir; I could not have said that, because my opinion was, that no jobbing could have been done with them at the time. I could not have said that, because it is contrary to my opinion, and was then. I don't think I could have jobbed those goods.

151 q. Do you know when the goods came there to 77 Lake street? Did you see them come?

A. Yes, sir; I saw them come in three or four express roads.

152 q. All at once, or at different times?

A. All at one time. I think it was in the evening.

153 q. In the evening, or in the day time?

A. I don't remember; but I know that I recollect of looking out of the window. I saw them come.

154 q. Did they come within an hour or so?

A. They came in a pile; that I know.

293 155 q. Did you ever see Levinson and Kempner there much together before the sale?

A. Well, I couldn't say; but Levinson was running in there continually. They may possibly have met together before; they were there after the sale. Levinson was in within a week looking for Kempner—within a week I should judge.

156 q. Who did Kempner rent the basement from?

A. Kempner rented the basement from me; but I didn't rent it to him directly; my uncle rented it to him. He could not get any other place short of $12 a day; he could not get any other place; he could not get any other store, and so I rented it to him.

157 q. How much did you charge him for it?

A. If he had had them there only a little time I would not have charged him anything; but as he had them there longer I charged him, I believe, one or two dollars a day. I don't know if he ever paid anything for it.

158 q. Was you present when any of this money was paid by Kempner to Levinson?

A. I can't say that I was. I believe he was in the store once, but not in the office, and I think I saw some signatures given. Kempner was not there.

159 q. What signatures were they?

294 A. I don't know. I had nothing to do with it. They were exchanging papers.

160 q. You didn't see that check signed?

A. No, sir.

161 q. Did you see the bill of sale signed?

A. No, sir.

162 q. What time was it that you saw it?

A. I could not tell you.

16 q. What time of the day, morn or evening?
A. That I could not tell you. I have paid no attention to it at all. I could not tell you from my personal knowledge that I recollect anything about it.

CONRAD WITKOWSKY.

*Certificate of commissioner.*

295 And I do further certify that the preceding deposition taken on application of Isaac Kempner, defendant, impleaded in a suit in chancery now pending in the Circuit Court of the United States for the northern district of Illinois, wherein Charles B. Churchill et al. are complainants and Isaac Kempner impleaded is defendant, were reduced to writing by me and signed by the said Conrad Witkowsky in my presence, the said witness having before the giving of such deposition being duly cautioned, examined and sworn to testify to the truth, the whole truth, and nothing but the truth, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and seal this 7th day of November, A. D. 1866, at Chicago in said district.

[SEAL.]

JAMES T. ELY,
*U. S. Com. Nor. Dist. Ills.*

[Revenue stamp, I. T. E., Nov. 7, 1866.]

Endorsed: Filed January 4, 1867. Wm. H. Bradley, cl'k.

*Defendant's testimony.*

296 Be it remembered, that on behalf of Isaac Kempner, impleaded as defendant in a suit now pending in the Circuit Court of the United States in the northern district of Illinois, wherein Isaac Kempner impleaded with John D. Levinson are defendants, and Charles B. Churchill, Leonard B. Smith, Lewis Friedlander, Julius Stick, and Lepold Lithaner, are plaintiffs, then appeared before me James T. Ely, United States commissioner for the northern district of Illinois, at the office of Goodwin and Larned, No. 22 McCormick's building, in the city of Chicago in said district, on the 17th day of October, 1866, at 10 o'clock a. m., the said Messrs. Goodwin and Larned of counsel for the said Isaac Kempner, and upon application of the said counsel the examination of witnessess in said cause was adjourned until Monday, October 22nd, at the same place at 10 o'clock a. m., and I hereby certify that the said appearance adjournment, and subsequent examination of the witnesses in said cause was had in pursuance of a certain subpœna, and acknowledgement of
297 service endorsed thereon, issued out of the said court and hereto attached. And I hereby further certify, that, on the said 22nd day of October, at 10 o'clock a. m., pursuant to the said adjournment, there appeared before me Messrs. Goodwin and Larned, of counsel for the said defendant, Kempner, and Moore, esquire, of counsel for the said complainants, and David Witkowsky, senior, a witness,

in obedience to said subpœna, to be examined on behalf of the said defendant, Kempner. And I further certify, that, at such hour and place, I then proceeded to examine David Witkowsky, senior, as witness on behalf of the said defendant, Kempner, in the aforesaid suit, and the said David Witkowsky, senior, being by me carefully examined, cautioned, and duly sworn to testify the whole truth, was examined in chief by Mr. Goodwin, and testified as follows:

298 *Deposition of David Witkowsky, senior.*

1 q. What is your name, residence, and occupation?

A. My name is David Witkowsky, sr. My age is 44 years. My residence is the city of Chicago. I am a merchant.

2 q. Do you know Isaac Kempner, the defendant in this suit?

A. I do.

3 q. How long have you known him?

A. For about twenty years.

4 q. Where did he live for the past few years?

A. In California.

5 q. What time during last winter did Kempner return from California?

A. The first that I saw of him in this city, if I recollect right, was about the beginning of January last.

6 q. Did he bring his family with him, or any family?

A. His wife was not here at that time.

7 q. When did she come?

A. She came here. He went down to New York after her and came back with her. I believe it was in March last. He went
299 back from here to New York, and brought her from there in last March.

8 q. State, if you know, what funds Mr. Kempner brought with him from California, at the time you last spoke of.

A. At the time he came here he spoke of going into several different businesses. He stated at the time that he had several thousand dollars; but afterwards he showed me a check on New York, from San Francisco on New York, for twelve thousand ($12,000) dollars in gold.

9 q. Was it a draft?

A. Yes, sir.

10 q. Did you see it?

A. Yes, sir.

11 q. You know of his having the cash?

A. Yes, sir. I advised him to sell that gold, and he realized over from sixteen to seventeen thousand in greenbacks out of it.

12 q. What connection, if any, of Kempner's are you?

A. He is a second cousin to me. His mother was my first cousin.

13 q. What do you know of any attempt on the part of Kempner in that winter to go into any business or invest his money in any business in Chicago?

A. As I said before I know that he stated——

(Objected to.)

Now I know that he wanted to go into several businesses in Chicago, and that he tried to.

300 (Objected to.)

14 q. That is only from what he has stated?

A. That is the way I know it.

(Objected to.)

15 q. What did he say in regard to going into business?

(Objected to.)

A. He stated when he came here that he was tired of being in California, and that he wanted to go into business in this country; that he had worked there for the last eighteen years, and it didn't suit him, and he wanted to go into business in this country, and he proposed to go into business with my son-in-law, and he proposed to go into partnership with a firm called Kenock Bro's. That I know of; and with my brother he wanted to go into business.

16 q. Do you know John D. Levinson, one of the defendants in this suit?

A. I know him now.

17 q. How long have you known him?

A. I think since last April was the first I ever knew him.

18 q. Do you know, and if so state, anything about a stock of goods that John D. Levinson had in the beginning of April, at No. 35 South Clark st.

301 A. I don't know anything about the stock, there in the store. All I know of the stock is when it came into our basement.

19 q. Do you know how Levinson bought the store and establishment there, that was there previously?

A. If I recollect right, I was informed ——

(Objected to.)

20 q. Was there a man there by the name of Spring then in possession of the stock, and did he buy of Spring?

A. Whether he bought it or not, or whether he got it for nothing, I can't say. That is all that I know.

21 q. Do you know the fact, that in April this Kempner bought out Levinson?

A. I do know of the fact that it was bought.

22 q. Was Levinson in your place of business, at 77 Lake street, a short time before that sale was made; and if so, when?

A. I remember of having seen Levinson last April, on a Saturday. I believe it was in our store.

23 q. What Saturday in reference to the sale?

A. The Saturday before the sale, before I knew that the goods was on our premises.

24 q. State what passed between him and you, if anything,

302 in regard to his selling to Kempner.

A. He was introduced to me as Mr. Levinson, and I never knew the man before. And when he was introduced to me, I asked him if he was the man whom Kempner wanted to buy of. He said he was the man. I asked him why he didn't sell him, and he said

that Kempner didn't give him enough; and I told him that I had advised Kempner, as a cousin of mine, that I should not give him more than he had offered him; and he said that he had offered 55 cts. on the dollar. I had advised Kempner to give him no more than 50 cts. on the dollar for the stock. That is all that I know of that which passed between me and Levinson.

25 q. Was there not anything said, at that time, about his selling to any other person, or of having been offered more by any other person?

A. If I recollect right, I believe that he said he had a bigger offer from another person for the stock.

26 q. Who was that person that he mentioned—the name?

A. Let me remember, if I can think of it. I believe it was

303 a man by the name of Henry Adler, if I am not mistaken.

27 q. Do you recollect what was said about Adler between you and Levinson?

A. He first said that Adler would give so much more for the stock, and I told him I should advise him to take it; but I would not advise to give more than fifty cents on a dollar for the stock; and if he offered him fifty-five on the dollar for the stock, I would not advise him to do it.

28 q. Do you remember saying to him that if Adler had offered sixty cents or a dollar, or asking him whether Adler had not offered him sixty cents on the dollar, and why he did not sell to Adler?

A. That is why I say that if he would give him more than 55 cents he had better take it, whether it was Adler or anybody else, because I myself would give him more than 50 cents on the dollar, and I so advised him.

29 q. Did he say why he did not take Adler's offer?

A. He supposed that Adler had not means enough to pay for it.

30 q. When, after that, did you next see Levinson?

A. I think I saw Levinson after the goods were delivered, on Monday, into our basement, when he came up after his pay for the goods.

31 q. Where was you?

304 A. I was up stairs in our office when he came up.

32 q. At what date was it?

A. It was on a Monday. I cannot exactly tell you what day it was.

33 q. Look at that paper, (Exhibit "A,") and see if that refreshes your memory.

A. I suppose it was upon that day, because that was done in my presence. I know it was one dinner time. He asked for Kempner, and I told him that he should call again, that "Kempner will be in in a little time," and in a little time Kempner came in, and says I, "Mr. Kempner, Mr. Levinson is looking for you, he wants his money;" and says he, "I have not got all of my money this morning. Mr. Greenbaum is not ready to pay me, but I have one or two thousand dollars," and he left the money with me then and says he,

"When Levinson comes again, you can settle that with him." When Levinson came in again the second time, he said he wanted to have it paid, and says I, "Mr. Kempner has not got all the money, but he only has so much money. He will have the rest this afternoon." And says he, "You can give me the money that you have, and give me a check for the balance."

305 34 q. Was Kempner there?

A. He came in while he was there talking.

35 q. What time was that?

A. Between twelve and one o'clock.

36 q. Who else was in the room besides them?

A. There was nobody but myself and my boy Solomon and Levinson; and there I have paid him myself for Kempner.

37 q. What did you pay him?

A. I paid him, I believe, was $2,000 in money down, and the rest upon Greenbaum's bank—a check.

38 q. How did you get at the amount?

A. We figured the amount.

39 q. From what?

A. For 55 cents on the dollar.

40 q. From what paper?

A. From the invoice before us.

41 q. Look at the paper now before you, marked "Defendants' Exhibit 'A,'" and state whether that is the paper referred by you from which you figured, and what was done in regard to the amount by you and Levinson.

A. The paper was brought there by Levinson, and the figures made by David Witkowsky, and corresponds with this. He is a pretty good book-keeper, and he gave me the figures before, and I found these figures on here to be correct. He said it was correct; and then we figured it at 55 cents on the dollar, and paid at that rate.

306 42 q. Where did he figure it?

A. In his own store. He handed me the figures some time before; I believe it was in the morning, and I looked over his figures with Levinson and I found they were right.

43 q. After you paid him the money, state what occurred and what was said by any or either of the parties there about the receipt.

A. When the money was paid and the receipt given I asked Mr. Levinson to give a receipt for 55 cents on the dollar. Says he "That is immaterial; if I give you a receipt for the full amount of this bill, that is sufficient, that is all that is necessary," and he gave that.

44 q. He wrote a receipt here on this exhibit "A" to which you refer?

A. Yes, sir; that is Levinson's own handwriting and that is the receipt he gave.

45 q. Look at that and state when Kempner's name was written and when that was written?

A. That was written on that very day after he signed the name here.

46 q. Was there any other person on that occasion at the time the money was paid and the receipt was given, as you have stated, except as you have stated yourself, Isaac Kempner, John D.
307 Levinson, and your son Solomon Witkowsky?

A. There was nobody present at that time except the parties you have stated.

47 q. Have you stated all that was said in regard to the receipt on that occasion by any or either of the parties present?

A. I do not exactly recollect whether I have or not stated something else, but it strikes me I told him at the time that there should be a receipt given for the sum paid on 55 cents on the dollar, and that he told me this was sufficient. That is what I recollect. I told him that 55 cents on the dollar was the sum, and that he should give a bill so as to be an exhibit of what the amount paid was. I do not remember of anything else being said. He said no, it was not necessary.

48 q. Did Isaac Kempner or Levinson or either of them say that they wanted the bill to be receipted for the full amount of the invoices?

A. I do not remember of having heard any such thing.

49 q. Did Isaac Kempner say that he wanted Levinson to make a receipt for the full amount of the invoince because he wanted to show the creditors that he paid dollar for dollar the amount?

308 A. There was no such thing in my presence. I never heard anything like that before.

50 q. Was Morris J. Burke present at the time the invoice was brought into your office and the money paid and the receipt given?

A. He was not present at that time.

51 q. After the money was paid who first left, Kempner or Levinson?

A. I believe Levinson left first.

52 q. Are you sure of that?

A. I will not say that I am sure, but I believe so.

53 q. Let me suggest to you did he leave first or not?

A. I cannot be sure because I did not take particular notice of him.

54 q. Did Levinson come back afterwards?

A. Yes, sir.

55 q. When he returned had Kempner gone?

A. Yes, sir.

56 q. What did you say to him, if any anything, about what he was going to do with the money?

A. Well, when Levinson came back at that time, he came back and said that the money was not counted correctly, and Mr. Burke came with him when he came back the second time, and he told me,
309 "The money is not counted correctly," and I told him, "I think the money is right;" and then it was there counted over by him, and I told him, "I think it must be right, because it was thousand-dollar packages; and then I counted and I said, "That money is right;" and I said, "Come, my good man, that money ought to be right," and he found it was right after he came back

the second time, and said that with that money he was going right out to pay the several persons in this city, and that he was going to pay that right away, and that after he paid that he was going to pay his New York creditors.

57 q. What has been your business in the past years in the city of Chicago?

A. I have been in Chicago from 1847 until 1858 in the clothing business; from 1858 to 1860 I was in no business; from 1860 up until the present time I have been in the fur business, and in the hat and cap business.

58 q. In these different businessess have you become familiar with the qualities and prices of clothing and of goods?

A. Well, I cannot say that I was posted as to prices exactly, but I know clothing as well as the next man. I understand clothing well enough, and I am a tailor by trade, and have been in the clothing business for a great many years.

59 q. Did you see and examine the stock of goods which Levinson sold to Kempner, and which you say he bought and put in the basement of your building?

A. I saw it for Kempner and it was put in the basement, and Kempner looked over the stock; he wanted me to see it, and I did see it.

60 q. Are you familiar with the prices of goods of that class sufficient to state to the court your opinion as to what would be a fair value of those goods on the invoices as contained in exhibit "A?"

A. I can only say from past experience that I have had a business, and that, taking everything in the store, and old new, and everything included about it, that the money which was paid for it was sufficient, and more than sufficient to give for it, and more than I would have paid for it myself.

61 q. What was the condition of the market for clothing and goods of that kind at that time; was it rising or falling?

A. If I recollect right the market was rather falling.

62 q. How came the goods to be brought to the basement of your building? State if you know.

A. Yes, sir; Mr. Kempner tried to get another place to put the goods in, and asked whether I did not know of any other place, and I went in with him to see about getting Stines's store; they had moved on the corner of Lake street and Wabash avenue; they had then a store to rent on Lake street, No. 117 Lake street, I believe, and Mr. Kempner wanted to rent the store, and Mr. Stines asked him ten or twelve dollars a day, I would not be positive which; and Kempner said that this was too much, and I told him he could have my basement for nothing, which he thought would be cheaper, and for that reason he has taken the basement; he thought that the other was too dear for him and that this would be the best for him, and that is the way he took my basement.

63 q. So that was taken as a temporary place of storage?

A. That was all it was taken for, just as a temporary place of storage.

64 q. Do you know this Morris J. Burke you have spoken of?

A. I know him.

65 Q. After this sale and after the bill was filed in this case did you meet him near the post office in the city of Chicago, and
312 if so, about what time, and what did he say then?

A. I met him while I was going home to my dinner, at the post-office; whether it was dinner or supper I could not be sure; but I know I went home from the store and I saw him at the post-office, and when I saw him I went up to him and spoke to him.

66 q. Did you ask him then and there what he knew about the sale by Levinson to Kempner?

A. Yes, sir.

67 q. Did Burke, in answer, say he knew nothing about the sale, except that Levinson asked him 60 or 70 cents, and Kempner would give but 55 cents, and that Levinson's and Kempner's talk was all between themselves, and he did not hear it?

A. That is the words that he told me.

68 q. Did Burke further say at the same time that if he had anything to do with it he would take sides with the party that would pay him best?

A. That is the very words that he did say to me.

69 q. State how the check that was given Levinson on Greenbaum & Co. was left as to the person to whom it was payable. Was it left blank, or to whom was it to be paid?

A. I believe it was made payable to bearer, if I am not mistaken.

313 70 q. Blank or bearer?

A. Every check is printed "to bearer."

71 q. There was a blank left for the name, and the bearer as printed was left in?

A. Yes, sir.

72 q. Do you know Henry C. Barry, of Chicago?

A. I believe I do; yes, sir; I know him.

73 q. State if you heard a conversation between him and Kempner some time after the sale in the city of Chicago, in regard to the sale, and the bill of Beardsley & Co., I think it was; and if so, state what that conversation was, and when it was.

A. I think Mr. Barry was the next day or the same day when the goods were put in the basement; I could not be sure which; either the next day or the same day, I think Mr. Barry came up stairs and asked for Kempner; and I told him that Mr. Kempner was down in the basement, and he went down, and I went with him, I believe, and I introduced him to Mr. Kempner; and I was speaking of the goods, and saw there was some goods which Levinson had bought of Beardsley, and he said he would like to buy those goods back of Mr. Kempner, and Kempner said he would like to sell him the whole
314 stock of goods; that he would like to sell it right out; that he had not such a good bargain; and, if I recollect right, he said that he would take $500 for his bargain; that he would let the whole stock go right away for $500 upon his purchase. That is my impression that he said $500.

74 q. Was there any other offer afterwards—any other sum mentioned?

A. Well, it was some days afterwards, one week or ten days—I do not know how long afterwards, but about that time—Barry came up again to our office there, and asked Mr. Kempner whether he would sell the stock; but he said then he would sell it, but I believe he then asked $1,500 from Mr. Barry, if I am not mistaken. He said that he had the goods all packed up to take out to a store in the country, and his clerks were hired, and that it put him to such expense that he could not sell it at such a price as he offered him before.

75 q. On the first occasion did Isaac Kempner ask him any more than $500?

A. I would not be sure whether it was $500, but I know that the second time he asked him more than he did the first time.

315 76 q. How much more did he ask him the second time than he did the first time?

A. I believe $1,000 more; that is what I remember.

*Cross-examination.*

By Mr. Moore:

77 q. Where did you say Kempner came from when he came here?

A. When he came here?

78 q. Yes, sir.

A. He came to see me first when he came from California.

79 q. When was that?

A. Last January; the beginning of last January, I believe.

80 q. Did Burke come from California?

A. I believe so; I do not know anything about Burke.

81 q. You do not know anything about where he did come from?

A. No, sir

82 q. Do you know where Levinson came from?

A. Not to my knowledge, only what I heard. If I should say what I have heard, I should say——

83 q. How do you know that Kempner came from California?

A. I have known Kempner before he went to California.

316 I often got his photograph while here from California, and I knew when he came from California; had a letter from him from New York; and his first visit that he paid in this city he paid to me.

84 q. What part of California was he in?

A. The most that I know of was when he was in San Francisco.

85 q. What business was Kempner in in California?

A. Well, the most that I heard from him is that he was in the clothing business.

86 q. Do you know how long he was in the clothing business there?

A. No, sir.

87 q. Do you know anything about his success in the clothing business there?

A. I do not.

88 q. You do not know whether he made money or lost money?

A. I do not, sir; not from California.

89 q. Do you know whether he and Levinson were acquainted with each other?

A. I do not.

90 q. You do not know anything about it?

A. I do not.

91 q. Do you know whether he and Burke were acquainted with each other?

A. No, sir; I do not.

92 q. Will you be kind enough to describe, as well as you
317 can, your counting-room where that money was paid and the note given?

A. The counting-room where the money was paid is the first floor of 77 Lake street, in the front. By the first floor I mean the first floor up-stairs; that is what we Germans always call it, though I believe you Americans say the first floor and mean the ground floor; but by the first floor I mean the first floor above the ground floor. It is on the first floor up stairs, over the ground floor, and you come right up to it from the entrance on the street; as you come in from the steps you are right into the room where our office is.

93 q. That room, is it a large room?

A. It is a store, perhaps 25 feet front by about 75 feet deep; that is, the whole room. The office is partitioned off, and is about 16 by 14 feet, where the money was paid in, but it is all in one room. It is, however, partitioned off with a small banister across.

94 q. Were there any counters in the room?

A. No, sir.

95 q. Any boxes?

A. Yes, sir; the boxes was there. You see, we are in the
318 fur business, and in the spring and summer we hardly exhibit our goods.

96 q. Was you in the fur business at that time?

A. Yes, sir.

97 q. You was not in the clothing business?

A. No, sir.

98 q. You had not been in the clothing business for how long?

A. Not since 1858.

99 q. Do you remember that on the 27th of April, 1866, you made an affidavit in this case?

A. (Looking at affidavit.) I suppose that is my name, sir.

100 q. This affidavit, (marked Exhibit "B,") did you read it or was it read to you before you signed it and swore to it?

A. I believe it was read to me. I do not think I have seen every word of it.

101 q. Did you then understand all that was in that affidavit?

A. I believe I did, or I would not have signed my name to it. I think I did.

102 q. Was the transaction at that time within your recollection so that you understood it pretty distinctly as you then testified to it?

A. I believe I did.

103 q. Do you remember that you then swore in that affidavit or

testify that on Saturday, the 7th day of April, said Levinson
319 came to your place of business, 77 Lake street, and inquire for Isaac Kempner, who was not in?

A. I believe that I did.

104 q. Was such the fact?

A. I believe so. I believe Mr. Levinson was there, as I have just stated.

105 q. Did you also state in that affidavit that the said Levinson left and returned again, Kempner being then there?

A. I believe I did.

106 q. Was such the fact?

A. I believe it was.

107 q. Do you remember that you stated in that affidavit that Levinson then told you that he wanted to sell out his stock of goods to said Kempner?

A. I believe that Mr. Kempner said ——

108 q. I am not asking you what he said. I am asking you whether he stated in that affidavit and whether you so swore that Levinson then told you that he wanted to sell out his stock of goods to Kempner?

A. Yes, sir; certainly he said so.

109 q. Did you swear to that in your affidavit?

A. If it is in the affidavit I swore to it.

110 q. As near as you can remember, did you so swear?

320 A. I could not remember what I said in that affidavit unless I should see it.

111 q. As near as you can remember, did you so state in your affidavit?

A. Probably I did.

112 q. Did you in that affidavit state or did you swear to that in your affidavit that you then asked him for how much he wanted to sell the goods?

A. I do not remember that I asked for how much he wanted to sell it, which is now a long time. I cannot remember every word so well as I did then; but whatever there is in that affidavit there I knew at the time and could corroborate everything in it if I remembered it now.

113 q. From your best recollection was it so stated or not?

A. What?

114 q. That when he said he wanted to sell out his goods to Kempner to ask him if you had he wanted to sell it?

A. Probably I did.

115 q. Is it your best recollection that it was stated in the affidavit and that you swore to it?

A. I do not know that I can say that it is in it or not, but if it is in then I suppose it was so.

321 116 q. You say now you don't remember you so stated?

A. Not positively.

117 q. Was your memory of what occurred better then than it is now?

A. I suppose it was, sir; I suppose, at that time, my memory was better for it than it is now.

118 q. And if you then so stated in the affidavit you mean to be understood then that that was correct?

A. That is it exactly; I mean that it was correct then.

119 q. Do you remember that you stated in your affidavit and did so swear in that affidavit, that he answered that question thus, "At 60 cents on the dollar?"

A. Well, I suppose that was so. I think he wanted 60 cents on the dollar.

120 q. Is it also stated in such affidavit that you then told Levinson that Kempner was a relative of yours, and that you would advise him, Kempner, to the best of your knowledge; do you remember that? Was that in your affidavit? Did you so swear?

A. Yes, sir; I have so stated before.

121 q. Do you remember that it is stated in your affidavit,
322 and that you swore that you told Levinson that Kempner ought not to give over fifty (50) cents on the dollar on that invoice of goods?

A. Yes, sir; that is just what I said.

122 q. Was that the fact?

A. That is the fact that I said so to Mr. Levinson, that he should not give more than fifty (50) cents on the dollar; but since he offered him fifty-five (55) that he should stand by it.

123 q. Was it the fact that you stated in your affidavit that he ought not to give over fifty (50) cents on the dollar on that invoice of goods?

A. On that invoice?

124 q. Yes.

A. No, sir; there was no invoice yet, I said on the stock.

125 q. Did you swear, in that affidavit, that you told him that he ought not to give more than fifty (50) cents on the dollar on that invoice of goods?

A. If I said invoice I didn't understand it then as well as I do now, because an invoice is a paper, but I meant on the stock.

126 q. Was your memory of what was said between you and Levinson at that time, when you made that affidavit, better than it is now?

323 A. I believe it ought to have been. It was fresh in my mind.

127 q. If you swore then that it was on that invoice that you would not give more than fifty (50) cents on the dollar, was not your memory better then than now upon that point?

A. All that I can say is this, that I should understand an invoice to be a paper like this here (Exhibit "A,") but I didn't mean that. I meant on the stock. I didn't mean on the invoice.

128 q. How long have you done business in this country?

A. Since 1847.

129 q. Do you distinctly understand the difference between an invoice of goods and a stock of goods?

A. Yes, sir; when a man speaks to me so plain as you do now I understand it better, but I might not have understood that when I heard the affidavit.

130 q. Wasn't this affidavit read to you at the time.

A. I suppose it was. I am not able to read every word so well, but it is a lawyer's handwriting, and it is pretty bad for me to read it now; but when you speak plain I can understand you about this invoice.

324 131 q. Can you give any reason why your memory was not as good at the time you made this affidavit, as to whether it was stated upon the invoice of the goods, as it is now?

A. I can answer you this; that there is no memory about it; it is only a misunderstanding of mine.

132 q. Can you give any reason now why you did not understand, and did not remember at the time this affidavit was read to you upon this point, as well as upon other points?

A. I can only answer, that I meant to say, at that time, that it was on the invoice, I may have mistaken the term invoice for the stock of goods.

133 q. Did you, at the time you made this affidavit, was it so read to you that you understood whether what was in it was true or not?

A. I believed it to be true at the time I signed it.

134 q. Did you, at the time, hear it all read?

A. I believe I did.

135 q. At the time Levinson was in the store did you tell him that fifty (50) cents on the dollar was all these goods were worth?

The examination was here, at half-past twelve o'clock p. m.,
325 adjourned till two o'clock p. m. of the same day, at which hour the cross-examination was continued, as follows:

136 q. You say that you believe that you heard this affidavit read when you swore to it; do you know whether you did or not?

A. I know I heard it read to me, certainly.

137 q. What were the reasons that you gave in the affidavit for saying that the goods were worth but fifty (50) cents on the dollar?

A. The reasons were because that I knew that there was an old stock in the store besides the new stock; and goods that have accumulated in a store, of various kinds, are not worth more than fifty (50) cents on the dollar to a man to go and buy them for cash to make something on them.

138 q. Is that all the reason that you gave in the affidavit?

A. There may be others there.

139 q. What reasons did you give in the affidavit?

A. These are my reasons now; I never looked at the affidavit since the day I read it, and I don't recollect whether I gave any other reasons there or not.

140 q. Could you remember, if I should suggest, any other reasons that you gave?

326 A. I should suppose so if you refresh my memory about it.

141 q. Did you give in that affidavit, as one of the reasons why the goods were not worth more than fifty (50) cents on the dollar, that they were bought by Levinson at high prices, and on credit?

A. I suppose that is a reason; I would take that as a reason now; if a man buys on credit, and another buys for cash, why, of course, the man who buys for cash buys it very much cheaper.

142 q. Are these the reasons that you gave Levinson for his paying only fifty (50) cents on a dollar?

A. These are the reasons. I don't want to make no speech on it, but everybody knows that if a man goes to New York and buys on credit, and another man goes down and buys for cash, that the man gets a great deal more for his cash than the other man who has to buy on credit, and that would make his stock of goods higher.

143 q. Are these the reasons that induced you to say to Levinson that fifty (50) cents on the dollar was all that he should have?

A. Those are the reasons, certainly; I meant that at the
327 time.

144 q. If that was one of the reasons that induced you to say so at the time, how did you know that Levinson bought those goods on credit?

A. It is very seldom a man in business goes down and pays cash. It is very seldom that a man going to New York to buy goods should pay cash; but I knew that Kempner came here and wanted to buy for cash; and if they bought goods on credit, and then paid cash afterwards, they got a discount for the paying cash on the price they paid for them.

145 q. Did you talk frequently with Kempner about the purchase of these goods before the purchase of them?

A. It was not, to my knowledge, only about a week or ten days before he bought them.

146 q. Did you talk frequently with him about the purchase?

A. Probably I did speak with him, probaly five or six times.

147 q. Were the reasons why he ought not to give more than fifty (50) cents on a dollar talked over between you and Kempner?

A. I suppose so.

148 q. You say that you remember the first time that Barry came into your place to inqure for Kempner?

328 A. Yes, sir.

149 q. You say you went down in the basement to see him?

A. Yes, sir.

150 q. I understand you to say that Kempner then offered, if he could get $500 more than he had given, that he would give up the goods?

A. I say that I am not sure whether it was $500 or more. I think it was something like $500, was the first offer.

151 q. Do you remember the amount of the offer the last time he came?

A. I do not; I remember it was for more, and he says, "Why do you ask me more?" He asked a thousand dollars more the last time,

and he says, "Why do you ask me a thousand dollars more?" And he says, "Because the goods have been all packed up, and are ready to send out to a store in the country, and I have hired my clerks," &c., as I stated before.

329 152 q. Did you make an affidavit in relation to this matter?

A. Yes, sir; I believe I did.

153 q. Is that your affidavit? (Exhibit "C.")

A. I believe it is.

154 q. Sworn to on the 21st May, 1866?

A. Yes, sir.

155 q. Did you read, or hear read, this affidavit at the time you swore to it?

A. I think I did.

156 q. Do you know whether you did or not?

A. Yes, sir.

157 q. Did you understand well, and know the contents of that affidavit when you signed it, and swore to it?

A. I believe I did, at the time.

158 q. Did you state in this affidavit, and swear to it, that on the first occasion of Mr. Barry's coming there that Mr. Kempner said, that if the parties interested in New York, (if the creditors and parties interested in New York) would give him $1,500 for his trouble in the matter, that they might take the goods?

A. I suppose I did at the time, I suppose so; I don't recollect the exact terms now, but at the time, I recollected it; at the time, right off, afterwards, I knew; but now, you see, it is some six or seven months.

159 q. Can you tell me now why you then swore that he offered

330 to take $1,500 from the creditors, and that you now say it was $500?

A. At that time I was sure it was $1,500, but now I am not sure whether it was five or $1,500, because I did not swear to it then; but now it has been so long a time ago.

160 q. Can you give me any reason why you then recollected that it was $1,500 that he asked, and that you now say that it was $500?

A. That recollection is upon matters within two or three or four weeks afterwards, but now my recollection is four or six months afterwards, but now it is out of my mind.

161 q. Do you consider the lapse of time any reason why you should then remember it was $1,500, and that now you should remember it was $500?

A. I told you in the outset that I was not sure it was $500, but at the time that I made that affidavit I was sure it was $1,500.

162 q. Can you give me any reason why you said, in this affidavit, that you said it was $1,500; that you remembered it then to be $1,500, and that now it is your impression that it was $500?

A. Only that that was a short time afterwards after it had happened, and I have forgotten it.

331 163 q. Do you not know that if Kempner offered to take $500 at the time, instead of $1,500, that the fair inference

would be that he did not believe that he had made a good bargain in the purchase?

A. If he would have taken $500, it would certainly mean that it has not more worth to him, and $1,500 is more worth than $500. I cannot certainly make any other answer; that is indeed so.

164 q. Do you or not now know that it would more tend to Kempner's benefit upon the final hearing of this case if he offered to take $500 then than if he offered to take $1,500 then?

A. When I answered the question I did not answer for any benefit to either party. I answered it for what I thought was right; if I answered it then $1,500, I would not have answered it the same, because I then answered it as I thought it then to be, and that is the better of my recollection.

165 q. Do you or not now, as an intelligent merchant of experience know, that if Kempner offered to take $500 that it would be benefiting him more in the final hearing of this case than that he offered to take $1,500?

332 A. Yes, sir; it would benefit him more, of course.

166 q. Did you state in this affidavit (Exhibit "C") that on the second occasion of Mr. Barry's visit, that Kempner said that although he offered to take $1,500 when he was offered before, that now he would not take less than $2,500?

A. I suppose that if it is in there, in the affidavit, that I did.

167 q. Do you remember that it was so stated there in the affidavit?

A. I do not.

168 q. You do not remember whether it was stated in the affidavit or not?

A. I do not remember.

169 q. Was your memory, at the time you made this affidavit, better of what had occurred at the time that Barry was there than it is now?

A. I believe it was?

170 q. Do you as a business man, and a man of experience in your business, know that on the second occasion of Barry's visit requiring $500, instead of $1,500, that such fact would be injurious to him upon the hearing before the court.

A. No; I did not know anything of the kind.

171 q. Did you then state that if he asked $500 on the first occasion of Barry's visit to give for the goods, that it would be

333 more beneficial to him upon the hearing than if he asked $1,500?

A. I did so; yes, sir.

172 q. Do you now wish to alter that opinion?

A. No, sir; I do not.

173 q. Then if that would benefit him, can you give any reason why it would not equally benefit him, if the fact was that he offered to take $1,500 on the second visit, instead of $2,500?

A. I may say that I do not understand that question good enough to answer it.

174 q. If such an amount, in the first visit, that he would take to give up the goods at a small sum would benefit him, upon the final hearing of the trial, would not said sum, upon [upon] the second vist of Barry, at a smaller amount, equally benefit him?

A. I suppose it would benefit him if he set it upon a smaller sum.

175 q. Do you remember on this occasion of Mr. Barry's second visit, of Kempner telling Mr. Barry that he could, by selling these goods, realize their original cost at 100 cents upon the dollar?

A. Do you mean Kempner?

176 q. Yes, sir; whether he, Kempner, said then that he could realize 100 cents on the dollar?

A. Yes, sir; I can explain that. He made the explanation
334 since he has the goods packed up to take them out in the country; that he can sell them there out in the country, and by selling them out in that way can realize 100 cents on the dollar; that is just what he said.

177 q. Did you understand that at the time to be, that he could realize 100 cents upon the dollar on what they cost in New York?

A. I believe so; that was the understanding the invoice calls for.

178 q. You speak of having met Burke near the post office; did you stop and talk to him upon that occasion with a view to get a statement upon that point that could be testified to?

A. I cannot say it is. I stopped Mr. Burke to hear whether he knew anything of this transaction, in order to help Mr. Kempner.

179 q. How do you mean? Did you intend that the result of that interview should help Mr. Kempner?

A. I thought if he knew anything—that Mr. Kempner had bought the goods—if he knew anything about the affair, that it might help Mr. Kempner, for I thought that Mr. Kempner should keep the goods. I did not want him to lose the money.

180 q. Did you, in this interview with Mr. Burke, seek to
335 find out whether Burke knew anything about the trade between Kempner and Levinson?

A. That is exactly what I was after. I wanted to see whether he could be a witness in Kempner's favor or not; that is as far as I know, I think so. I know that the matter is far so fair as I know; but what is behind me I do not know.

181 q. You say that you were present when the papers were signed?

A. Yes, sir; that was done in our office.

182 q. And you were present?

A. Yes, sir.

183 q. You know the money was paid?

A. I paid the money myself.

184 q. If, as you stated, 50 cents on the dollar was all the goods were worth, and that he had paid 55 cents on the dollar, what reason was there for you to see if Burke knew anything upon this subject—whether or not it was a fair sale?

A. I can only say this, that when this money was paid there was no litigation against these goods; and after the goods were paid, then

a summons was served upon Mr. Kempner; then it was time for me to help him as a friend, and to see that he was not robbed of his goods; and, at the time, I did not know anything of the kind was going on.

336 185 q. Did you stop Mr. Burke to see whether, in his testimony, whether he could help Kempner?

A. I went to see Burke to see whether he knew anything of the matter to satisfy me that he had bought the goods fair, as I thought he did, and as I think now. That is all the reason.

186 q. Was your object at the time to find out whether Burke knew anything that would help Kempner's purchase?

A. My object was certainly to see whether he would help Kempner.

187 q. When was the first time that you ever heard there was any trouble with Levinson about this selling out?

A. I did not know anything of Levinson at all, but a day or two before the sale.

188 q. Did you know this before the sale?

A. Two or three days before that I knew that Levinson wanted to sell out.

189 q. Do you remember of Mr. Kempner and Mr. Levinson ever coming into your place, and that it was stated that Levinson was going to sell out at less than cost?

A. I do not remember of any such thing.

190 q. Tell us, as near as you can, how many days it was before the sale that you heard that Levinson talked of selling?

A. Well, sir; I did not know that Levinson would sell more than two or three days before. I did not know that Kempner

337 wanted to buy a stock of goods, and I have not seen Levinson more than once in my life before—after the time that I was introduced to him.

191 q. Did you know at the time you told Levinson that the stock was worth 50 cents on a dollar that such a portion of Levinson's goods had just been purchased in New York?

A. No, sir; I did not.

192 q. You did not know that he had purchased some a little while before on credit?

A. Why, certainly he purchased, but how much I do not know.

193 q. Would not the amount of goods that he had on hand, as compared with the amount that he had just purchased, have much to do with the full value of the stock of goods?

A. Well, sir, of course, the more new goods he bought, the more valuable the stock would be.

194 q. When Barry first called upon you with reference to this matter, did you or not show Barry a letter that you had received from N. Y. from some of Levinson's creditors, asking you to secure them their debt, if you could?

A. Yes, sir, I did.

195 q. Who was that letter from?

338 A. From L. Morris.

196 q. Have you that letter?

A. Yes, sir; I believe so, if I did not destroy it.

197 q. Do you know whether you did destroy it or not?

A. No, sir; I believe I did not; I think the letter is now in our office.

198 q. Was this before Kempner had bought these goods?

A. No, sir; it was not, or I would have attended to this letter, and I said so to Mr. Barry at the time, but the letter was just too late. I wished it was before, and I would have secured the debt.

199 q. Do you know whether that letter came to you by due course of mail?

A. I do not know whether it did or not. I know it came to me after Mr. Barry came to me, after Levinson had paid the money; everything was over. I guess it was two days after when I got this letter.

200 q. Do you know that it was afterwards?

A. I am sure it was, because I told Mr. Barry I would not have returned the money to Mr. Kempner, because Mr. Morris is a very good friend of mine, and I would not have returned the money, and then secured it for Mr. Morris.

201 q. Was or not this time that Mr. Barry came over be-
339 fore or after any legal proceedings had been instituted in this case?

A. Well, I believe there was no legal proceedings instituted, when Mr. Barry came first. I believe there was not. I do not believe there was. No; Mr. Barry came right after the sale, and after the goods was in the basement, a day or two after. The proceedings were instituted some four or five days after that.

202 q. Then this first interview between Mr. Barry and Mr. Kempner was before any proceedings had been commenced?

A. So far as I recollect it was.

203 q. Now, then, was the second call of Mr. Barry and the second interview between Kempner and Mr. Barry before or after any legal proceedings had been commenced?

A. I think that was also before there was any proceedings against him, the second interview.

204 q. I will ask you whether or not from the time that Kempner first talked of purchasing these goods, you being his relative and feeling an interest in him, whether or not you have not, in reference to all the matters that you thought interested him, and has pertained to the merits of this controversy, given him all the aid and
340 advice that you could upon this subject?

A. I have given so much advice as he asked me, but no more.

205 q. Have you or not given him all the aid, advice, and information that you had on this subject, that you thought would tend to his interest and his benefit?

A. Certainly I have, and will do so now. I do all that I can, that he shall get his goods, because I know that he has paid for them.

206 q. I want to ask you whether you know David Adams?

A. I do.

207 q. Do you know Solomon Witkowsky, jr.?

A. He is my son.

208 q. Do you know David Witkowsky, jr.?

A. That is my nephew.

209 q. Did you ever talk with these different persons, and explain with each other the reasons why these goods were not worth more than 50 cents on the dollar?

A. I did not, sir.

210 q. You did not?

A. No, sir; I did not.

211 q. There never was a word passed between you as to these reasons?

A. No, sir.

212 q. With anybody else?

341 A. With Kempner.

213 q. With anybody else?

A. With outsiders I did; I told them the goods were not worth more than that.

214 q. Did you with anybody of those who have made affidavits in this case?

A. Not to my recollection.

215 q. Would you remember it if you had?

A. I think so.

216 q. Did you state to counsel, before these affidavits were drawn, the truth in this case and all that you knew about it?

A. I believe I stated to him all that I knew—all that I thought I knew.

217 q. Did you state to counsel, before the affidavits were drawn, as a reason why the goods were worth to them 50 cents on the dollar, that goods bought in a lump as a whole, and for the purpose of retailing for cash, were not worth more than 50 cents on the dollar?

A. I do not know whether I did say so or not; I do not remember it any way.

218 q. Do you mean to say that in your store that this bill, and these reasons were not all talked over before the persons there present—your son and David Witkowsky?

A. David was not in the store.

219 q. Did you ever talk with David Adams about it?

342 A. No, sir, not that I know of.

220 q. Do you know whether you ever talked with him about it or not?

A. I do not remember of having a talk with him about it.

221 q. You do not remember it?

A. No, sir.

222 q. Is this your affidavit (Exhibit "D") made on the 4th of May, 1866, in this case?

A. Yes, sir.

223 q. Did you swear to this affidavit?

A. Yes, sir.

*Direct examination resumed.*

By Mr. Goodwin:

224 q. How old was your son Solomon when he was present in your counting-room at the time the receipt was given on the invoice and the money paid?

A. He was about 14 years and 6 months, I guess. He will be 15 years next December.

225 q. How came he to be there at that time?

A. He went to the Mercantile College, and would come and eat his lunch in our office at dinner time. He had just been there to eat his lunch, and was listening to this transaction.

226 q. Was he living at home with you at that time?

343 A. Yes, sir.

227 q. At what distance did you then live from the place of your business?

A. I lived at the corner of 12th street and Michigan avenue.

228 q. He was not in the habit of returning home to dinner?

A. No, sir.

*Cross-examination resumed.*

229 q. Where was you the morning the goods were put in your basement?

A. I was up stairs in the office.

230 q. Do you know how they removed these goods to this place?

A. Yes, sir.

231 q. How?

A. I know they came there with some five or six or seven, I do not know how many, express wagons, and had these goods on; I know there was a lot of express wagons.

232 q. How long from the time they commenced removing them until they finished it?

A. It must have been—well, I guess they moved them in about an hour or an hour and a half; I do not think it took longer to put the goods in the basement.

233 q. What time that day did you see Levinson first?

344 A. I did not see him at all until he came up to ask for the money, and that was about between twelve and one o'clock.

DAVID WITKOWSKY, SR.

Subscribed and sworn to before me this 17 day of October, A. D. 1866.

[SEAL.] JAMES T. ELY,
*U. S. Com'r Nor. Dist. Ill.*

And I hereby further certify, at the same time and place there appeared before me David Adams, another witness upon behalf of said defendant, Kempner, who was examined in chief by Mr. Goodwin, and testified as follows:

*Deposition of David Adams.*

345 1 q. What is your name?
A. David Adams.
2 q. What is your age?
A. Forty-nine years.
3 q. Where is your residence?
A. In the city of Chicago.
4 q. What is your occupation?
A. My occupation is the clothing business.
5 q. How long have you been in Chicago?
A. Thirteen years.
6 q. What has been your business?
A. Always clothing, particularly.
7 q. How?
A. Buying piece goods and making him up—manufacturing him, retailing him out, that is all.
8 q. What has been the extent of your business, during these thirteen years, in the clothing line?
A. It has been different in the last four or five years; it has gone from about twenty-five thousand (25,000) to thirty-two thousand (32,000) dollars.
9 q. Do you know Isaac Kempner, defendant in this case?
A. I do this last year that he came to this city here.
10 q. What connection has he with you?
346 A. He is a brother-in-law to me; I got married to his sister, eight or nine years ago.
11 q. What time did he come to Chicago in the year 1866?
A. He came here, whether in January or February I could not say; he came here the last winter.
12 q. Where did he come from?
A. He came from New York city here, from California; he came up here to visit his sister; he hadn't seen her for the last 27 years.
13 q. Did he bring any money with him?
A. He fetched, I guess, about twelve thousand (12,000) dollars in gold, or towards that.
14 q. Where did he stay when he first came here?
A. He stayed with me about a month or two or six weeks; I could not remember how long.
15 q. Did he afterwards go to board elsewhere?
A. Yes, sir, with Mr. David Witkowsky, at his house. They had more company there, and he said it would be more pleasant for his wife, and so he went there; they had more company there.
16 q. After leaving your house, and boarding at Mr. Witkowsky's, did he consult with you as to buying a stock of goods from Mr. Levinson?
A. He came to me and he said, "I want you to do me a favor," and I said, "What?" and he said, "I can buy out a man here, and I want you to examine his stock of goods." And I thought I

347 would do my brother-in-law a favor, and I went out with him. If I could do my brother-in-law a favor I wish to do it.

17 q. What time was that?

A. I guess the beginning of March that that was; it was not later than in March.

18 q. Had he previously consulted with you about investing his money here in business?

A. Yes, sir; he said if he had a chance to go into a good business here, he would like to; and after that he would come to me with his questions of business; and I told him, "If you buy this stock, I would not take the stand, because it is not a good stand for the business."

(Exception.)

19 q. On his request, then, did you go to Levinson's store with him?

A. Yes, sir.

20 q. On what day was that?

A. I could not tell, exactly; it was in March some time, whether Tuesday or Wednesday, or Friday, I could not say. He came to my store and said, "I wish you to do me a favor." I went with him there and look over the goods there. If I could do my brother-in-law a help to look over the goods, I would.

21 q. Was that on Sunday?

A. No, sir, that was not on Sunday; that was three weeks
348 before he bought him out; I guess it was two or three weeks before.

22 q. Did you go with him on a Sunday, two weeks or so preceding the time when he bought, to look over the goods and price them with him, and Levinson looked over the stock with you?

A. Yes, sir, I guess it was on a Sunday, but I could not tell you exactly, because I know Mr. Levinson took out some stock, and I asked him what he paid for that goods, and he said, so much; and I said, "Why, I manufacture them here, and I get up the same suit of clothes five (5) dollars cheaper than you would have got it;" and I took up the goods and looked at them, and it was a broken stock and an old stock. There was some old goods that had been there for five years, and it may be a longer time before he find a customer for it. Of course there was some new goods there, but they were mostly a broken stock; and he had, I remember, goods there for $13, and I have got them here for $5 50.

23 q. Now, when you examined them, was that on Sunday, or was it before you went and took the invoice?

349 A. I don't know whether it was on a Sunday or not, but I know I was there with Mr. Kempner, and I guess it was on a Sunday, anyhow, because the curtains was all down from the windows. It was on a Sunday, and there was another man behind me, Mr. Libberman's son, and he was there the same day.

24 q. So that you finally recollect it was on Sunday?

A. Yes, sir.

25 q. How long was it before he made a bargain with him?

A. It was about two or three weeks before he made a bargain with him.

26 q. Did you examine these goods for the purpose of advising Mr. Kempner how much they were worth, as a merchant clothier?

A. Yes, sir, that's so. He showed me some goods there, and some furnishing goods. Of course if I take up one article, I know another of the same kind, and I state to Kempner that I would not buy the goods entirely. There may have been some five or eight thousand dollars' worth of new goods, but the stock of goods was a second-hand stock. There was a man by the name of Spring there before that had bought those goods two years before, in New York.

27 q. And Levinson had bought them of him?

A. Yes, sir.

350 28 q. Did you know that fact?

A. Yes, sir; because Mr. Spring went into this store, and only stopped there five or six months, and then sold them to Levinson, and so Levinson told us. He bought them of Mr. Rosenthal. He knew that the stock of goods in there was the stock of goods from Mr. Spring.

29 q. Did they consist mostly of ready-made clothing?

A. Yes, sir.

30 q. How many piece goods were there?

A. About two or three thousand dollars was the most piece goods there was there; according to my opinion there was no more.

31 q. What did they consist of?

A. Some broadcloths and remnants—remnants of two and a half to three and a half yards, and some small remnants, and some pants patterns, and some too small for pants.

32 q. What was the smallest remnant there was?

A. Well, there was some only a yard and a half, and then there was some a yard and a quarter, and some not so much.

33 q. While you was there you say you told Levinson that he had paid too much for some of these goods; what did he say in answer?

A. He said, "I guess not," and I told him, "You have so many old goods here;" and he showed me some neck-ties for $12 a

351 dozen, and I told him that I had them in my store, the same thing, for $5 a dozen; and he said I was hard against him, and he should not do any more with me.

34 q. What conversation took place on that occasion between Kempner and Levinson about Kempner's making an offer for the goods and buying the goods?

A. I was there, and he asked me, "What would you take?" and he said that they were worth 100 cents on the dollar. And Kempner told Levinson, and I told him, that they could make them a great deal cheaper in New York; and he wanted that I should make him an offer, and he asked me how much, and I told him they were not worth more than fifty (50) cents on a dollar, and I said hardly that to buy out a stock of that kind for money; that I wouldn't give more than that. He asked me for my opinion, and he was my brother-in-law, and I told him that I would not pay more than fifty (50) cents on a dollar. They were not worth more than that.

35 q. Did Kempner on that occasion make any offer to him, or afterwards?

A. I guess he made an offer to him at that time. I don't
352 know whether it was at that time; I don't know what time.

36 q. Do you remember that that time Levinson asked him to make up his mind and make an offer by the next day?

A. Yes, sir; that I remember. He says, "Make up your mind what offer you can give me, because, if you do not I will sell to somebody else." And Kempner asked him, "Why you sell?" And he said he was tired of the business, and he wanted to go into a business where there was more exercise. That is what Levinson said to Kempner. And so he says, "I will give you fifty or fifty-five cents." I cannot now tell what offer he gave him.

37 q. Did you and Kempner leave the store together?

A. Yes, sir.

38 q. You, I think, have stated what advice you gave to Kempner after the examination of the stock of goods as to how much he should offer to give him?

A. Yes, sir; I told him not over fifty cents on a dollar.

39 q. Did you a few days after see Mr. Kempner in the street, on Lake street, and with him see Mr. Levison? and if so, state when it was, and where and what place.

A. Well, I passed through the streets with Mr. Kempner.
353 I was down town, and Mr. Kempner came out of Mr. Witkowsky's store, and we passed up, and Levinson called him, and he said, "If you wish to take these goods at the offer that you gave me I will take it." And I said, "What was it?" And Levinson said, "Fifty-five cents on a dollar." But Kempner said, "I would rather not; but if you insist, I will not back down."

40 q. What did Levinson say?

A. He said he might have it.

41 q. Did he give any reason why he wanted to sell out?

A. He said he wanted some other business—some other business where he could get some more exercise. Kempner asked him why he wanted to sell, and he said so.

42 q. What did he state about the money?

A. He said he could invest his money better than in clothing, and he wanted to go into the grocery business. I heard that with my own mouth.

43 q. After that did Kempner go into the store with him?

A. No, I guess not. I went home, and he came along behind. I
1 cannot tell; but a few minutes afterwards he was right away behind me.

354 44 q. How long after that did you go with Kempner to Levinson's store?

A. About two days later.

45 q. What day of the week was it?

A. It was on a Friday that he called him, and about Sunday we took up the stock there—took an account of stock there.

46 q. On Kempner's request did you go there for the purpose of taking an inventory of stock?

A. I went up there to do a favor to my brother-in-law, and he showed the goods up, and I stayed and looked at them as they come down.

47 q. Did you go there on Mr. Kempner's request to take an account of stock on Sunday?

A. Yes, sir.

48 q. What day of the month was it?

A. On the 8th or 9th. It was on a Sunday, because Monday he removed his stock from there.

49 q. If Monday was the 9th, then this day you went there would be on the 8th to take an account of stock?

A. Yes, sir; it was on a Sunday.

50 q. What time of the day did you go there?

A. About eight o'clock in the morning.

51 q. With whom did you go there?

A. With Mr. Kempner.

355 52 q. Who did you find there?

A. Mr. Levison and his clerk.

53 q. Was there anybody else there at that time?

A. No, sir; there was two there—the clerk and him.

54 q. Did Kempner go out?

A. Yes, sir.

55 q. What for?

A. For Mr. Witkowsky—Mr. David Witkowsky, jr.

56 q. When you went into the store did you have any conversation? Did Kempner and yourself have any conversation with Mr. Levinson?

A. No, sir. He asked David Witkowsky, because he knew Mr. Kempner would fetch David along to take in the stock. David is a good clerk, and knowed about book-keeping.

57 q. When you went in did Levinson say anything?

A. He asked me if David Witkowsky comes, and Kempner said he would bring him along; he would have him write something.

58 q. Have you stated, now, all that you recollect about what was said when you first went in there?

A. Yes, sir.

59 q. Was there anything said by him to the effect as to "How many Jews are you going to bring along here? How many Jews are you going to bring in?"

A. Yes, sir; he did say, "How many more Jews are you
356 going to bring in here," because I guess that he expected only David Witkowsky; and Kempner said, "Oh, no matter; that he had been there before, and had examined the goods with him;" and then he went out, and soon after came back.

60 q. Did David Witkowsky come with him or before him?

A. No, sir; David Witkowsky came before him. He went out to look for him, and then Kempner came back alone, and Witkowsky came there before him.

61 q. After Kempner got there did you proceed to take an account of stock?

A. Yes, sir.

62 q. State how that was done.

A. Well, Mr. Witkowsky took a few sheets of paper, and Mr. Levinson took some, and the clerk would take up the stock and say so many yards, or so many things, according to the mark on the tickets, at so much, whatever it was marked. They had their mark on them thus, and he would say three pair of pantaloons, or so many pantaloons, at $10; and I said I would not take them at that at all.

63 q. In what way did you go through and make out the invoice?

A. In that way?

64 q. Who called them off?

357 A. Mr. Levinson's clerk, and then this clerk got tired, and Mr. Levinson himself called off the goods.

65 q. Who set them down?

A. David Witkowsky put it on one piece of paper, and Mr. Levinson on another paper.

66 q. Whose handwriting is that? (Exhibit "A."

A. I could not tell you. If I am not mistaken, I think that is Mr. Levinson's. I could not tell you.

67 q. Were there cards with the cost marked on all the goods, with slight exceptions?

A. Yes, sir. On some they were not, and Mr. Levinson told what it was out of his own head.

68 q. How many goods were those?

A. Well, I think some socks, some furnishing goods, and some pantaloons were not marked, and some vests; and so he told what they cost.

69 q. Were there, at any time while you was in the store taking the account, or before you commenced taking it, any bills of goods produced or examined by Levinson or Kempner?

A. There were some goods that did not have marks on them, and so Levinson said, I will show you the bills, but he did not. He only said they cost so much, and if you think that is not right for those

358 goods, I will show you the bill, but he did not produce any bills at all.

70 q. Was there anything said after you went in there, between Levinson and Kempner, about Kempner's creditors?

A. No, sir; not a bit. I never heard anything of the kind; I never heard a word said about that. What I did not hear, of course I could not say; but I never heard a word on that subject.

71 q. Have you stated all the conversation that took place in your hearing upon that occasion?

A. I did not hear anything at all said about any creditors.

72 q. Were you there all the time?

A. I was in there until we took up the whole stock, about one o'clock, when we went to dinner.

73 q. Was there anything said with regard to Mr. Friedlander & Co.?

A. I never heard anything at all said about them. If there was anything said, I did not hear it.

74 q. Was there anything said by Kempner to this effect, that Little Coleman would have to suffer, or that he was sorry that Little Coleman would have to suffer?

A. No, sir; I never heard any such a word.

359 75 q. What, if anything, did Kempner say, before he left, to Levinson about his selling to any other person, if he could get somebody?

A. Yes, sir; right from the beginning he said, "If you can get one cent or two cents more, I do not want them myself." He said the same thing two or three days before he called me over from the street, and said that if he had not paid for them he would not take them.

76 q. Did you take the entire stock in Levinson's store?

A. Yes, sir.

77 q. Was there any other person present than those you have mentioned?

A. No, sir; unless, perhaps, the hired man.

78 q. What time did you leave there?

A. By about half past twelve, or a quarter to one.

79 q. State what took place after you got through.

A. After he got through, we went out together, Mr. Kempner and I; guess he went back and gave him a key, so that he could get in in the morning; and so Kempner took one key and Levinson took one key, and they went home to dinner.

80 q. What arrangement, if any, was made as to how or when Kempner should take possession?

A. He said, Kempner, I shall be here about half-past seven

360 in the morning, because Kempner was to come in the morning, and I was to help him.

81 q. What arrangement was made after they got their inventory, as to when possession should be taken?

A. He said, you can come for your goods about eight or nine; any time you can send for your goods, because I know he had a draft from New York for the money.

82 q. Was that so understood?

A. Yes, sir. He had left his money with his cousin, and I expect his cousin sent him the money, some ten or twelve thousand dollars.

83 q. From your examination of that stock of goods, made on these two occasions, will you state, as a merchant, how much, in your opinion, that stock of goods was worth, to be purchased for cash, in a lump, for the purpose of retailing and selling out?

A. I do not know. This business is a very hard- business to say. On some goods he would not get his money back, but on some he would get 50 or 60 or 70 cents. I do not think that this stock, as it was, would be worth any more than 50 cents on the dollar, according to my opinion.

84 q. From your examination made of the stock of those different goods, will you state, as a merchant, how much, in your

361 opinion, that stock of goods are worth, to be purchased in the lump, for the purpose of retailing and selling out?

A. It is not worth more than 50 cents on the dollar.

85 q. Will you state more particularly your reasons, in reference to the state of the market and the state of the goods themselves?

A. All it is worth is 50 cents on the dollar. Take them in the average, and they are not worth more than 50 cents on the dollar.

86 q. What was the state of the market at that time, and how had it been previously?

A. The same time, as I went in with Kempner, I told him that these goods were not worth more than 75 cents on the dollar. When they were bought the price paid was entirely too high, as he had got his goods. I could have bought new goods myself 35 per cent. cheaper than he had bought them; and after this they were 10 or 15 cents less worth.

87 q. Was the market up and down after that?

A. The goods were falling.

88 q. State, if you please, about how much is the fair average of profit which a retailer of such goods ought to be able to make, to save himself, in the purchase of goods.

A. Thirty per cent. of profit, at least.

362 *Cross-examination.*

By Mr. Moore:

89 q. How long have you known Mr. Levinson?

A. I have seen him but once before this.

90 q. Where did he live before he came here?

A. I do not know.

91 q. Where did he come from?

A. I do not know.

92 q. How long had you known him?

A. About six weeks before. He came to my store with Mr. Spring, and Mr. Spring asked if Mr. Kempner was in; and he told me I should give him my card, and he would put down where he lived; and Levinson said, I would like to see him, and as soon as he came I should give him the card. Mr. Spring knew Kempner in California. They stopped there in one place, I guess—Mr. Spring and Mr. Kempner.

93 q. What place?

A. I do not know.

94 q. Were Levinson and Kempner acquainted with each other?

A. I do not know. Mr. Levinson and Mr. Spring came and asked for Mr. Kempner. That was the first time that I saw him.

95 q. How long had Kempner been here?

A. Two or three days, that is all.

363 96 q. You do not know this Clark?

A. No, sir; I guess he must have some interest in the business; I do not know.

97 q. You spoke about remnants in your examination?

A. Yes, sir.

98 q. Were not those remnants vest patterns?

A. No, sir; there was some remnants three-quarters of a yard, and some remnants a yard and a quarter, and some remnants too much for vest patterns, and some too small for anything else—some few, not many.

99 q. They were not many?

A. There was a little pile there that was all remnants; a yard and a quarter would be a pants pattern, and there might be something for a little boy, and it would take so much for a vest pattern.

100 q. Some of these goods, you say. were marked very high?

A. Awful high.

101 q. Why was it that Kempner had paid more for these good than you have had to pay?

A. I do not know; well, I will tell you one thing; sometimes a man wants to go into business directly, and he wants to get his stock right together, and he does not care whether he pays five cents
364 more or not, when he ought to get it cheaper, so that he can sell it cheaper.

102 q. He had bought these in N. Y., had he not?

A. I do not know where Levinson had bought them all.

103 q. He had bought out an old stock and then h ad replenishe that stock in the spring, had he not?

A. I cannot tell you; I never saw him more than once before in my store.

104 q. Were not the goods fashionable and seasonable?

A. Yes, sir; of course some of them were fashionable and seasonable.

105 q. If it had been an old stock, then they would not have been seasonable, would they?

A. If it had been all an old stock, of course it would not be; but some of them were seasonable goods, and some of them were not worth 30 cents, and some were worth 75 cents.

106 q. Was not the stock, taking it as a whole, a seasonable stock?

A. Not all.

107 q. But taking the stock as a whole?

A. Well, as a general thing, perhaps it was.

108 q. Overcoats would have been seasonable last spring, would they not?

A. I guess so.

365 108 q. Do not clothing men generally strive to run their overcoats down in the spring?

A. No, that is all humbug to say so.

110 q. Were there many overcoats in this stock?

A. There were three or four there that was priced at $50 and we had the same for about 30, and I would not have given that money for them. If I had such money together I would not have given that money for that stock. I do not know how many goods there was.

111 q. You was there on Sunday when the stock was taken out?

A. Yes, sir.

112 q. All the time?

A. Yes, sir; I and Kempner went out together.

113 q. What part did you perform that day?

A. I was seeing the stock, and Kempner would say "What do you think of this," and I says, "It is high enough; I would not give the money for it to anybody;" and then the clerk got tired, and then Levinson called off.

114 q. You were in different parts of the room?

A. It is only a little small room, about half so big as these two rooms, the whole store; an ordinary small store, not a big one either.

115 q. Was you close to Levinson all the time?

366 A. Yes, sir; I told you he wanted to fight me two or three times because I said you have paid too much for the goods in N. Y. If I went to N. Y. I could get such goods cheaper, and I says it must be that your money is not good, or else your credit is not good, because there was no use of his paying two prices.

116 q. He offered to show the bills, you say?

A. Yes, but he never showed any; he says, Kempner, if you do not believe me I will show you the bills.

117 q. Kempner believed him all through?

A. Yes, sir; he says, I do not believe you want to cheat me out of a dollar, or a piece of goods.

118 q. Tell us whether these two men were acquainted with each other before?

A. I do not know; I never knew anything of that. All I saw of Levinson was the first time he came to my store with Mr. Spring together, and the remark was made, that Mr. Spring knew Mr. Kempner.

119 q. Where is Mr. Spring?

A. I guess, in the south, somewhere from here; in Georgia, I think' but I do not know where he is. He is somewhere south from here.

120 q. When did Levinson buy from Mr. Spring?

A. I guess some three, or four, or five months before; I do not know. I could not tell exactly what time, perhaps five or six

367 months before. I was not there.

121 q. Can you state whether it was in the winter or fall?

A. I could not tell you exactly, because I do not know, and what I do not know I would not say.

122 q. At the time that this was going on, was there anything said about the length of time he had it at the store there?

A. No, sir; I never heard anything of that kind.

123 q. Who is that Little Coleman in N. Y.?

A. I do not know such a man; I do not know anything about him, sir.

124 q. You did not see his bill that day?

A. No, sir; he never showed the bill to me.

125 q. You and Kempner went there together on that Sunday to take the stock?

A. Yes, sir.

126 q. Then Kempner went there to look for David Witkowsky?

A. Yes, sir.

127 q. Did he bring Witkowsky there with him?

A. No, sir; Witkowsky came in before Kempner came back, and Kempner came back afterwards.

128 q. When was it that Levinson asked him how many Jews he was going to bring there?

368 A. At the first beginning, when Kempner and I came there together.

129 q. He is a Jew himself, is he not?

A. I guess he is one.

130 q. He is an Israelite, is he not?

A. I guess so; he looks like one, anyhow.

131 q. Whilst Kempner was there, what did he do?

A. Nothing. About ten minutes after Kempner went away, Witkowsky came in, and ten minutes after that Kempner came in, and then they went to work right away; each took a paper to put down the invoice, and went to work.

132 q. Were there any of the goods that were not marked?

A. Well, there were some of the goods that were not marked.

133 q. Were there many or few that were not marked?

A. I do not know; when they came to any that were not marked, Levinson said, "I will show you the bill."

134 q. Were there many or few?

A. There were some vests, and some pantaloons, and some furnishing goods, but how many, I do not know.

135 q. Can you not remember whether those that were not marked were few, as compared with the bulk of them?

369 A. I think so.

136 q. Were those of the old or the new stock?

A. The old stock, the most.

D. ADAMS.

Subscribed and sworn to before me this 17 day of October, A. D. 1866.

[SEAL.] JAMES T. ELY, *U. S. Com.*

*Deposition of David Witkowsky, jr.*

And the examination was adjourned Oct. 23, at 10 a. m., same place, when there appeared before me David Witkowsky, jr., who being examined in chief by Mr. Goodwin, testified as follows:

1 q. What is your name, age, place of residence, and occupation?

A. My name is David Witkowsky, junior; I am 24 year old, and live in Chicago; I am a clothing dealer.

2 q. How long have you been in the clothing business?

A. Well, I have been in business now for most three years. I have been, altogether, in business since I was thirteen years

370 old, about twelve years.

3 q. Do you know Isaac Kempner and J. E. Levinson, defendants in this suit?

A. I do.

4 q. State whether at any time during the spring, and if so, when,

you went to Levinson's store, at Kempner's request, for the purpose of making an inventory.

A. I did; I went there, I think, in the month of April some time.

5 q. What day of the week?

A. On Sunday forenoon.

6 q. Do you remember the day of the month?

A. It was in the early part of the month; I don't recollect the exact day.

7 q. How long was it before the goods were delivered by Levinson under the sale of Kempner?

A. It was the day before.

8 q. What time in the morning did you go there?

A. I went there about nine o'clock.

9 q. Who was there?

A. When I came into the store there was Mr. Levinson and Mr. Adams.

10 q. How long were you there before Mr. Isaac Kempner came in?

A. About ten minutes, I should judge.

11 q. State what was said and done on the occasion.

A. Well, when Isaac Kempner came in he said, "Now let
371 us go to work;" and so Levinson gave me some sheets of paper to inventory, and he took a book, or some sheets of paper—I don't remember which—to inventory with.

(Paper shown him—Exhibit "A.")

A. This paper is his inventory. We went right to work then and there, and kept at it until we got through. There was nothing particular said during this time. There were various remarks made by Adams and Kempner. Adams would say the goods were dear, and that they were not worth half the money; and then Levinson would say he didn't know anything about it. Levinson often said he would show the bills if he didn't think the prices were right; but he didn't show any bills if he had any to show.

12 q. State how the inventory was taken; from what.

A. From the cost-mark on the ticket of the goods.

13 q. Were all the goods so ticketed? and if any were not, state to what extent.

A. They were pretty much all ticketed, and what was not ticketed Kempner took their word for the cost.

14 q. Who called off?

372 A. Burke called off first.

15 q. Who kept the account?

A. Levinson kept his account, and I kept the other account.

16 q. You say Burke called off first?

A. Yes, sir.

17 q. What then?

A. They changed when they got about half way through. Burke got stuck on some goods; he could not make out the mark, and they changed, and Levinson called off and Burke took the book until they got through; I think it was about half way through, or somewhere thereabouts.

18 q. What time did you finish?

A. We finished, I think, a little after one o'clock; just about one o'clock.

19 q. State if anything was said or done in regard to taking possession and paying for the goods; and if so, what, before he left the store?

A. Kempner said they would settle in the morning; that is all that I recollect.

20 q. Who was to get possession of the goods, and when?

A. He was to get possession of the goods in the morning when he paid; he was to pay in Greenbaum's bank. I think he got possession of goods the next morning.

21 q. What was said upon that subject, if anything?

A. I don't recollect anything further.

373 22 q. What was done with the keys of the store?

A. The keys of the store, they took them both, Levinson and Burke. I know that Kempner didn't get any.

23 q. Do you remember whether he had one key?

A. He didn't, to my certain knowledge.

24 q. Are you quite sure that Kempner didn't take one key, and Levinson keep one?

A. I feel pretty sure that Kempner had no key; I really don't recollect. I should think that he had none.

25 q. Have you stated, as near as you can recollect, what conversation that you recollect took place after you went in and before you got there and left?

A. Yes, sir; I have stated pretty much that I recollect; there was but a very little said.

26 q. Was anything said there about how much Kempner was to pay for the goods?

A. Yes, sir; I heard that mentioned several times through the forenoon.

27 q. Was it, or was it not, understood there how much he was to pay?

A. Well, the remark made about that was, when Adams sometimes would complain about the goods being very high, and Levinson would say they were cheap enough anyway at 55 cts. on the dollar.

374 28 q. How near were you, from the time you went in until you left and until Kempner left, to Kempner and Levinson?

A. Well, they were together all the time while they were inventoring.

29 q. How near were you to them?

A. Well, within a few feet.

30 q. Were you within hearing distance of all that passed between them?

A. Yes, sir.

31 q. State if, while there upon that occasion, anything was said by Levinson and Kempner about Levinson's creditors.

A. I heard nothing said of that kind.

32 q. Was there anything said about any creditors; that Levinson wed Friedlander or anybody else?

A. Yes, sir. I believe I said something on that point myself. We ourselves have bought goods of Friedlander, and I saw some goods there, and I said these are Friedlander's goods, and Levinson said he didn't buy a dollar's worth of Friedlander.

33 q. Did Levinson tell Kempner in your hearing that he owed Friedlander any amount whatever?

A. No, sir.

34 q. Was there anything said there in your hearing [in
375 your hearing] about a man by the name, as they called him, of "Coleman?"

A. That name was mentioned I recollect, but I don't recollect in what form.

35 q. Do you recollect that Coleman's name was mentioned in any way?

A. I recollect Coleman's name was mentioned, but I don't in what form or how.

36 q. Was there anything said there about "little Coleman's" having to suffer, or anything of that kind?

A. Well, I can't say as to the exact remark that was made about Coleman; I recollect his name was mentioned, but the exact remark I cannot recollect.

37 q. Do you recollect whether the exact remark was about his suffering in any way?

A. I could not say positively.

38 q. You say there was nothing said about any creditors or any man that Levinson owed?

A. Nothing but those parties that were just spoken about, Friedlander and Coleman; those were the only two firms that were mentioned, to my recollection.

39 q. You stated that there were no bills shown during that time?

A. There were not.

40 q. Whom did you leave the store with?
376 A. With Kempner and with Adams.

41 q. Did you become familiar, and had you known about this stock of goods, so as to form an idea of its value?

A. Well, I was in the store frequently and looked around at the goods. On that day of the inventory I took a particular view of the goods, for while they were calling off I used to get up, being tired, and look around the goods a little, and see what the goods were, and I was tolerably acquainted with goods that were in the store.

42 q. State what, in your judgment, those goods were worth in the market at the time they were purchased by Kempner, taken in the lump for cash, having to the object of purchasing them, and the state of the market?

A. Well, at the time he bought those goods, and laying out that amount of money that he did, with a view of course of some little profit, I think that he paid all that they were worth. It was positively all that I would have paid for them if I had to buy them for money myself.

43 q. Will you state your reasons?

A. Well, there are various reasons; the first thing that the stock was a mixed stock; the next reason was that Levinson bought
377 his goods on credit, and his credit, as I was also informed, was not a 1, and consequently he had to pay pretty high prices; and I know, from examining the goods, that some of them were very dear. He had pantaloons there for twelve dollars that we could manufacture for eight. Some of his goods were very dear, thirty or forty per cent. dearer than the same goods in our own store, and consequently I think they were all paid for if a man wanted to make anything in investing his money.

44 q. Do you know anything about the nature of the stock, whether is was new or old?

A. Well, I should judge as near as I can come at it, I should think that about 5-8 were new and about $\frac{3}{8}$ were old, or about half in half, I can't exactly tell.

45 q. How was it about the stock being a portion of an old stock of goods bought by Levinson?

A. Part of it was; there was some goods there that was very old goods that he had bought in the spring.

46 q. State the character of the goods. What were they generally?

A. Well, that old stock had some very old linen goods there
378 that were very dear. There were some old Marseilles goods there that were very dear, and there was some clothing goods there of very old times that were very dear. He had black frock coats there, I think, that were inventoried from thirty-four to thirty-six dollars, that were not worth at that time—I should not have bought them for—from twenty to twenty-two dollars.

47 q. At this time, what had been, and what was the state of the market in reference to a downward or an upward tendency of that sort of goods, about the 9th of April last?

A. If I am not mistaken, at about that time there was a downward tendency in the goods; they were high last fall, and went down last spring.

48 q. Now tell me whether or not, after you went into that store until you went out with Kempner, you heard any such thing from Levinson, or from either of them, that "little Coleman" would have to suffer?

A. Coleman's name was mentioned towards the end, but the exact remark and in what connection it was made I cannot recollect.

49 q. Can you state whether you heard any such remark as that coming from Kempner?

A. I could not state it positively. I don't recollect in what connection the name was mentioned.

379 50 q. Was any such remark as that used at all?

A. There might have been, but I don't remember any such remark.

51 q. If there had been, you would not have heard it?

A. Yes, sir, I should.

52 q. If Coleman's name was mentioned there at all, must it not have been in some other connection, and remarked upon as simply somebody of whom Levinson had bought goods?

A. That I could not say. I don't know in what connection it was mentioned.

53 q. In what other way could it have been mentioned?

A. I don't know this Coleman. I never heard of him before in my life, and consequently I could not tell in what connection it occurred.

54 q. If such a remark had been made, would you not have been likely to have heard it, and to have [and to have] now remembered it?

A. I would have most likely have recollected it.

55 q. Was there any statement there of any debts out by Levinson to any creditor?

A. Nothing to my knowledge was mentioned about what he owed to any creditor.

*Cross-examination.*

By Mr. Moore:

56 q. You was in business here in the spring of 1865?

A. Yes, sir.

380 57 q. On your own account?

A. Yes, sir.

58 q. What was the state of the clothing market at that time?

A. I think that at that time there was a decline in the market; a considerable fall, if I am not mistaken.

59 q. How long did that decline continue, and up to what period?

A. Up to the fall months.

60 q. Then what was the condition of the market?

A. Then, in the fall, there was an advance, a pretty large advance, a pretty large advance in the fall of 1865.

61 q. How did it continue through the winter?

A. That kept up till December, or some time thereabouts, and then in the spring of this year goods come down.

62 q. When did they commence going down this spring—about what time?

A. Goods come down about just before or after New Year's, and I don't think there was any marked advance all through the spring.

63 q. Was there any decline during the spring of 1866?

A. Well, the decline from the fall prices continued.

64 q. During the months of January, February, and March, what was the condition of the market? Were they declining or raising?

381 A. Well, they were declining, I should judge, about that time.

65 q. During all that time I mean?

A. There was about an even market last spring; the goods were very dear in the fall of 1865; goods were considerably up and dear as at any time during the war, and the fall was during the spring.

66 q. During the spring or winter months?

A. After the business of last winter got over.

67 q. To what time did that fall extend? was there any check to that fall?

A. Well, I should judge the market has been pretty nearly even all this year.

68 q. Do you suppose that goods were as high about the middle of April as they were the middle of March?

A. Well, I could not say that they would be exactly. In the middle of April the purchasing for the spring trade would be well nigh over, and consequently there would be a decline in these goods; the market, as I understand it, works now in this way to my knowledge; when there is a demand for goods they are high; when the demand ceases, goods can be bought cheaper.

69 q. Why is it you recollect so positively about Kempner's not having any of those keys?

382 A. Well, I think he didn't have any. I could not swear with regard to the matter anything positive. I should think he didn't. I recollect a remark that—I think I made the remark myself to Mr. Kempner—that I would not let them have the keys; that if I bought the goods I would want the keys to see that there wasn't anything removed or taken away from the invoice. I recollect making that remark to him when I went with him.

70 q. Do you remember the reply he made?

A. I can't recollect exactly the reply he made; it was simply some kind of a remark. I have been worried a good deal in my mind lately, and this thing has gone entirely out of my recollection; and so I have given it no attention, and this has passed away from me. I could not say anything definite about it if I was to be sworn. I am sworn now, I know, but I recollect; I can't tell anything about it. I believe I made some such remark as that, but I can't recollect what it is; it would be on my part mere guessing.

71 q. Don't you remember that it was agreed that Kempner should take one of the keys and Levinson should take the other, so they should have the keys for them to meet the next morning?

383 A. I don't remember anything about it.

72 q. Was there an agreement as to what time they were to meet there the next morning?

A. There was not an agreement. Kempner and Burke, if I recollect right, at 9 o'clock the next morning came there to help him; and Burke said that he would be there for that purpose.

73 q. You was not there the next morning?

A. I went around there the next morning; I understood that Kempner wanted to see me there.

74 q. What time in the morning did you go there?

A. Towards nine o'clock.

75 q. Had they commenced moving the goods when you were there?

A. No, sir.

76 q. Were any of the goods removed while you were there?

A. No, sir.

77 q. Were any of the goods packed in boxes prior to the removal while you were there?

A. Not that I know of.

78 q. Do you know how they were removed?

A. That I don't know either. I didn't witness the removal. I don't know how they were removed.

79 q. The goods were merely piled up on the shelves?

384 A. They were up on the shelves, but after the inventory a good many, or a great majority, were piled up on the counter, and were "mussed up," a natural consequence of the inventory.

80 q. Then these were taken from those shelves and from the counters, and were put into an express wagon?

A. I could not say anything about that. I didn't see them, and don't know anything about it.

81 q. Were there none loaded while you were there?

A. No, sir.

82 q. Were there any express wagons there ready to carry them away while you were there?

A. No, sir.

83 q. Was Levinson there while you were there that morning?

A. I think not.

84 q. Was Burke?

A. Not that I am aware of.

85 q. Was Kempner there?

A. He went there with me, and I left him there.

86 q. Was the store open?

A. I don't think it was open.

87 q. Was it or not open or left shut?

A. I think it was not open. I didn't go into the store that morning. I guess it was open.

88 q. Can you remember whether the door was open or not?

385 A. I recollect that when we come to the store, Kempner and I, he said that Burke is not here, and that he had promised to be here; and then I told him that I hadn't any time to stay here, and that I must go around and attend to my own business; and I went right away, and he remained there, and I went off to my business.

89 q. You didn't remain to see whether he was there or not?

A. No, sir, I didn't.

90 q. Do you know what proportion of this stock were old goods, and what were new stock?

A. Well, I should judge they were pretty near half and half.

91 q. Why do you say so?

A. Well, I saw a good many of the goods, and while I could not get it exactly correct, I should think that half of them, according to my judgment, were old goods. I should think pretty near that amount divided.

92 q. Were not the goods there very good and seasonable?

A. Well, those goods he had, those goods that he had bought recently were certainly seasonable at that time.

93 q. Taking the bulk of the goods generally, were they not seasonable?

A. Well, I know he had quite a number of old goods that
386 were not seasonable; quite a large number.

94 q. How many, would you judge, now?

A. I could not say how many I saw, but he had there some two big stacks of overcoats; but I could not say exactly how many there was.

95 q. Well, how many were there, 50? Were there as many fifty?

A. Well, I should judge so. I should judge there were more.

96 q. Do you remember any other goods that were unseasonable except those other goods?

A. Oh, yes; there were a great many goods there that were unseasonable.

97 q. Are you positive that there were a great many old goods there as you are that there were a great many overcoats there?

A. There was more old stock there than I should judge overcoats.

98 q. Are you as positive of that fact as you were that there were a great many overcoats there?

A. There were considerable overcoats.

99 q. That you recollect positively of?

A. That I am positive of; there were two stacks of them, if I recollect right. I could not swear to the number.

100 q. I find on this exhibit here 18 overcoats.

A. I think there must have been more than that. Coats
387 may stand for overcoats also. I know that in my own inventory I put down a great many things as first so many, and then put down the prices and carried it out.

101 q. Here it says "coats," and then it goes on down here and says "overcoats."

A. I know one thing, that he hadn't a great many business coats. His stock of business coats was the poorest I ever saw; his stock consisted more of pants and vests, and of piece goods. He had a large quantity of piece goods. I never saw such a poor lot of business coats in a stock in my life.

102 q. Do you know the character of the house of Pearot, in New York?

A. I never heard of the firm before?

103 q. Do you know the character of the house of Friedlander & Co.?

A. We have dealt with them.

104 q. Is it a good house?

A. Yes, sir.

105 q. A large house?

A. Well, yes; a pretty large house.

106 q. For all kinds of goods?

A. Clothing. I believe entirely ready-made clothing.

107 q. Of all goods?

A. All the goods in their line?

108 q. Do you know the character of the house of Churchill & Beardslee, in New York?

388 A. That is the house that I have never dealt with. I don't know any house in New York that I don't deal with, because we have dealt with some firms for seventeen years right along; we seldom deal with any new house at all.

109 q. You don't know the character of those houses there?

A. Not except by reputation.

110 q. You don't know the character of Pearot's house even by reputation?

A. I never heard of them.

111 q. You don't know their standing as clothiers?

A. No, sir; I never heard of them.

112 q. Is [is] not very easy to be mistaken, as a practical thing, in the grade of clothes and clothing without close examination?

A. Not by any merchant. I would not be afraid to estimate any piece of clothing.

113 q. Or of piece goods either?

A. No, sir; nor of piece goods either; either made up into clothing or remaining in the piece.

114 q. You think you can tell the grade whenever you put your hand on it?

A. I think as soon as I put my hand on an article I can tell its quality pretty closely.

115 q. How do you know that Levinson's credit was bad in New York?

389 A. His general reputation in the city here amongst merchants was bad and I heard it was bad in New York; his credit was certainly bad here. It was stated that he was locked up by the house of Friedlander, that they locked him up, and that they had to support him.

116 q. That was his general reputation?

A. Yes, sir; his credit in New York was, I know from reputation here, good for nothing; his credit was very bad here; that was his general reputation here.

117 q. Do you know anything about how long Kempner and Levinson had been acquainted with each other?

A. No; I never knew either one of them before I knew them here.

118 q. How long had Kempner been here before these goods were bought?

A. Well; I should judge about two months before, or very near that time.

119 q. Do you know where he come from?

A. From California.

120 q. Do you how long Levinson had been here?

A. Levinson had been here, at the time he sold, somewhere about a year and a half.

121 q. Where did come from?

A. He was here from California by reputation. Kempner last came from Idaho; that is what was said, and that was what he
390 told me, that he had been there three or four years previous.

122 q. Do you know where Burke came from?

A. I never knew Burke before I saw him here, but what I have been told is, that he come here from California.

123 q. Do you know whether Burke and Kempner and Levinson knew each other there in California?

A. That I don't know anything about.

124 q. This man Spring was in business here?

A. Yes, sir; Spring was in business here together with two men and they had a north-side store under the Revere House, but they had but one name under which to do business. The firm over on the north side was Rosenthal. There were three partners together, though the name of the business was only one. When Levinson come from California they changed over to this store.

125 q. In his own name?

A. No, sir; I believe it was Rosenthal.

126 q. Well, that is the same; is there any doubt that Spring was interested in it; in the house that was sold to Levinson?

A. The business was done in the name of Rosenthal, though there was two that might have been selling in his name.

391 127 q. What do you mean by "in his name"?

A. That they both were bankrupt, I suppose.

128 q. Is Rosenthal a connection of Friedlandler?

A. He is a brother-in-law to either Friedlander or Stick, by marriage. I could not say which.

129 q. Were all these persons, Isaac Kempner, David Adams, Levinson, yourself, and David Witkowsky here, were they, and are they all Israelites, together with yourself?

A. Yes, sir; as to Levinson and Burke, they professed Judaism, but where they come from, I don't know. They professed to be Jews.

DAVID WITKOWSKY, JR.

Subscribed and sworn to before me the 23 day of Oct., 1866.

[SEAL.] J. T. ELY, *U. S. Com'r.*

And the examination was then adjourned to 10 a. m., Oct. 24, '66, at which time Solomon Witkowsky appeared before me and the said counsel, and having been examined by Mr. Goodwin in chief in behalf of the defendant, Kempner, testified as follows:

*Deposition of Solomon Witkowsky.*

392 1 q. State your name, age, residence, and place of occupation?

A. My name is Solomon Witkowsky; I will be 15 next December; I reside in the city of Chicago.

2 q. Are you a son of David Witkowsky, whoh as been a witness in this case?

A. Yes, sir.

3 q. Are you acquainted with Isaac Kempner?

A. Yes, sir.

4 q. Were you present on a certain occasion last spring when Kempner and Levinson were in your father's office and some money was paid?

A. Yes, sir.

5 q. State when it was, as near as you can now recollect.

A. It was last April.

6 q. What time in April?

A. I cannot recollect what time; it was in April though.

7 q. What time was it in reference to what was understood to be a purchase by Kempner from Levinson of a certain stock of goods on Clark street; what time was it in reference to that?

A. I cannot recollect just the time.

393 8 q. How did you come to be in your father's office at that time?

A. I had just come from the mercantile college at that time; just at 12 o'clock I left the college and went up to my father's office.

9 q. Where?

A. 77 Lake street, up stairs.

10 q. For what purpose was you there?

A. I generally take my lunch there and and eat it there.

11 q. Why did you take your lunch there?

A. The distance was too far to walk home.

12 q. Did you live with your father at that time?

A. Yes, sir.

13 q. Where did you live?

A. At the corner of 12th and Michigan avenue.

14 q. While there did you see a man they call Levinson; and if so, when did you first see him?

A. I saw a man; I saw him a little after 12 o'clock. I was up in the office, he came up there and asked for Mr. Kempner, and I told him he was not in, and he went out.

15 q. Who was in there at that time?

A. I was.

16 q. Anybody else?

A. No, sir.

17 q. When did you next see him?

394 A. About half-past twelve o'clock.

18 q. Where?

A. At my father's office.

19 q. Who was there?

A. I was there and my father and Mr. Kempner and Mr. Levinson.

20 q. Did Mr. Levinson come in with them, or did they come in before?

A. They came in before.

21 q. State particularly what took place at that time within your observation between the parties who were there and what was said.

A. As near as I can recollect Mr. Levinson came up to the desk and took a roll of paper out of his side coat pocket.

22 q. Will you look at Exhibit "A" and in that connection say whether or not that looks like the roll of paper which he took out of his pocket?

A. It looks like it.

23 q. Do you you believe it to be the same roll of paper which he took out of his pocket?

A. Yes, sir.

24 q. Proceed with your narrative.

A. After he had taken out the invoice from his pocket he said he had been figuring it over at Leopold's clothing store, and that
395 father could figure it over again to see if it was correct, and he did and he found it to be correct; and Mr. Kempner took a roll from the drawer of $2,000. I believe, and laid them on the desk; then father opened the drawer there to take out the check book and Mr. Levinson said he had a check already written out in full and ready to be signed, and so I think Mr. Kempner signed the check and father took a two-cent stamp and stamped it. After that was done father asked Mr. Levinson if he would give a receipt, and he said it was not necessary, but would just receipt the invoice and that that would be enough; so they wanted to give him a pen and I stepped across the table and handed him a pen, and he receipted it.

25 q. For what amount did he receipt it?

A. I do not know the amount; I do not know anything about it.

26 q. Was there anything said as to whether it was a percentage, or any amount of any amount, or a percentage upon anything?

A. I believe the percentage was 55 cents on the dollar.

27 q. On the dollar of what?

A. Of the invoice.

396 28 q. What was it your father said to him about that? Give it as near as you can.

A. I do not recollect him saying anthing but what I have stated, that he, father, asked him if it was correct, and Levinson said that he had figured it at Leopold's store, and father took and found it to be correct, and that is all that I recollect about it.

29 q. Did Mr. Kempner say anything about it?

A. No, sir; I believe not.

30 q. When your father spoke of his giving a receipt did he say anything about giving a receipt for the amount of 55 per cent. actually paid him?

A. No, sir; he did not say anything of the kind.

31 q. You do not understand me. I ask you was what your father said when he spoke of giving a receipt, did your father refer to a receipt for 55 per cent. of the amount actually paid has to be actually endorsed on the bill?

A. I think not.

32 q. What did your father want a receipt for?

A. For the amount of the invoice goods; he wanted a receipt for that.

33 q. For the whole sum?

397 A. Yes, sir.

34 q. Instead of for 55 per cent. only on the dollar?

A. Yes, sir.

35 q. But I thought you said just now that Mr. Levinson said it was not necessary to give a receipt for the whole amount?

A. No, sir; if I said so I did not mean it; I meant for the invoice, the whole invoice; if I said so I did not mean it.

36 q. You say Kempner did not say anything?

A. No, sir.

37 q. Now, how much did your father pay him, $2,000 in cash, and then what was the amount of the check?

A. I could not see the amount of the check; I was sitting on the other side of the room.

38 q. Did I understand that the check was for the balance of the sum, at 55 per cent. upon the total amount of the invoice?

A. Yes, sir.

29 q. Was not that the amount that he wanted a receipt for, and that Levinson said that that was not necessary if he receipted the bill in full?

A. I do not recollect—well he might have said so, I do not recollect well; I recollect this signing here, and that is all that I recollect.

398 40 q. Do you not recollect that your father said to him that the receipt should be for the amount actually paid, or that the receipt should show what was the amount actually paid, instead of the total sum of the invoice?

A. Yes, sir; I recollect that now, that father asked him to deduct that from the amount, from this here, (referring to receipt on exhibit.)

41 q. What did Levinson say?

A. He said that it was not necessary, and asked for a pen, and I gave him a pen and he receipted it?

42 q. What did he say then?

A. I suppose he ——

43 q. I do not ask you what you supposed. What did he say?

A. He said he would receipt the invoice.

44 q. So that, as you now state it, your father wanted a receipt to show the amount actually paid, and he said that it was not necessary as he would give a receipt in full for the whole invoice?

A. Yes, sir.

45 q. Was there any other persons present than those you have named?

399 A. I was there, and Mr. Kempner, and Mr. Levinson and my father; there were no other persons in the room.

46 q. Do you know a man by the name of Burke?

A. I know him by sight.

47 q. State whether he was present on that occasion in your father's office.

A. No, sir.

48 q. Did you remain there until they went out; until after they had got through with that and went out?

A. Yes, sir.

49 q. Did you see Levinson write on this paper (Exhibit "A?")

A. Yes, sir.

50 q. Was you near enough to see what he wrote?

A. No, sir.

51 q. Did Isaac Kempner there, in your presence, tell Levinson that he wanted a receipt for the full amount to show creditors?

A. No, sir.

52 q. Did he say anything about wanting a receipt for the full amount, to show creditors that he received dollar for dollar for the property?

A. No, sir.

53 q. Was there anything of that kind said in the room?

A. No, sir; not while I was there.

54 q. Did Levinson or Kempner, or both, leave before you left?

400 A. Yes, sir.

55 q. Which one first?

A. I do not recollect which one first; I think Levinson went first; he went first; I am positive that Levinson went first.

56 q. Are you sure of that?

A. Yes, sir.

57 q. Might not Kempner have gone out first?

A. I think not.

58 q. You think Kempner did not go and leave Levinson there?

A. No, sir.

*Cross-examination.*

By Mr. Moore:

59 q. Can you fix the date of this?

A. No, sir.

60 q. What month was it in?

A. The month of April.

61 q. Was it in the fore part or the latter part of the month?

A. The middle part of April.

62 q. Do you think it was as early as the tenth?

A. No, sir.

63 q. You think it was after the tenth?

A. Yes, sir.

64 q. Are you satisfied of that?

401 A. I am not satisfied; I am not satisfied that it was in the middle part, but it was in April.

65 q. Do you remember what day of the week it was?

A. I think it was on Monday morning.

66 q. What time of the day?

A. At noon intermission.

67 q. Between twelve and one?

A. Yes, sir.

68 q. You say there was no one there except your father, yourself, and Kempner and Levinson?

A. Yes, sir.

69 q. What part of the store or office was it?

A. In the fore part of the store, fronting on Lake street.

70 q. After this money was paid and this check was given, they went away you say; that Levinson and Kempner both went away?

A. They went away, and Levinson went first.

71 q. Did either of them come back afterwards?

A. Not while I was there they did not.

72 q. How long did you stay there?

A. Until one o'clock.

73 q. Then where did you go?

A. Over to the college.

74 q. Were you there any more that day?

A. I might have been there after half-past four o'clock.

402 75 q. Did you or not see any more of them?

A. No, sir.

76 q. Were you there the next day?

A. Yes sir.

77 q. Did they call there the next day?

A. No, sir; Mr. Kempner was there.

78 q. Was there no one else there with him?

A. No, sir.

79 q. Did Kempner and Levinson come there together on that day to your father's office?

A. No, sir.

80 q. Which came first?

A. Mr. Kempner came first.

81 q. You do not know whether Levinson had been there before or not?

A. Yes, sir; he had been there before.

82 q. Had you seen him there before that day—before that transaction?

A. Yes, sir.

83 q. What time?

A. A little after twelve o'clock.

84 q. Who was with him then?

A. No one.

85 q. Then he went away and came back again?

A. Yes, sir.

86 q. And then it was that this money was paid upon it?

A. Yes, sir.

403 87 q. Who paid the money? who counted the money out to Levinson?

A. My father.

88 q. Who gave the check?

A. Levinson gave the check; he had a blank check and Mr. Kempner signed it.

89 q. Just state again, in your own way, what was said then.

A. First, my father came up, and then Mr. Kempner, and then Mr. Levinson, as he walked through, came on into the office and took out this invoice and father wanted to know whether it was correct or not; and he said that it had been figured over at Leopold's, and that father could figure it again; and father figured it over and found it to be correct; and then Mr. Kempner took $2,000 and father counted it and Mr. Levinson took the money; after that my father wanted to make out a check, and he stated that it was not necessary, for that he had a blank already filled out in his pocket, and he gave the check and Mr. Kempner signed it; and after that father asked for a receipt at 55 cents on a dollar, and Mr. Levinson thought it was not necessary, for he had receipted the invoice. There was not a pen handy there, and I stepped around and handed him a pen, and he
404 stepped around and he receipted it.

90 q. You do not know anything about the amount contained in this?

A. No, sir; I did not pay any attention to that.

91 q. Mr. Levinson said it was not necessary to do what?

A. To give a receipt for this amount at 55 cents on a dollar.

92 q. What did your father say?

A. Father did not say anything.

93 q. Was anything said in reply to that at all?

A. No, sir.

94 q. Levinson then receipted and did not say anything at all?

A. No, sir.

95 q. You saw no more of these men that day, or the next day?

A. No, sir; I saw Levinson the next day.

96 q. You did not see them at your father's county room, either that day or the next day?

A. No, sir.

97 q. How did you know that that was Levinson that came in there?

A. He came up once before and wanted to see Mr. Kempner and he was not in, and I asked him who he was, and he said Mr. Levinson.

98 q. When was that?

A. About twelve o'clock.

405 99 q. Neither your father nor Mr. Kempner were in at that time?

A. No, sir.

100 q. Where was Kempner living at that time?

A. At our house.

101 q. At your father's house?

A. Yes, sir.

102 q. You was there living also?

A. Yes, sir.

103 q. Where did he stay during the business hours generally.

A. I do not know; he did not have any business; he might be often in my father's office and sometimes might be over in Witkowsky's, junr's store.

104 q. He spent his evenings home, did he not?

A. Most generally.

105 q. Did he and your father in your presence talk this matter over frequently?

A. No, sir.

106 q. Did they not have any conversation about it at all?

A. No, sir; not that I know of.

107 q. They had no conversation about it at all?

A. No, sir.

108 q. You never heard it mentioned by your father?

A. No, sir.

109 q. Nor by Mr. Kempner?

A. No, sir.

110 q. You never heard it talked about by either of them?

A. No, sir.

111 q. How did you come to give your affidavit then?

406 A. I was sitting up in my father's office, and they said that there was a young man by the name of Burke that said that he was up in the office at the time of the payment of the money, and I said that I was up in the office at the time, and that I did not see that man there, and so my affidavit was taken.

112 q. You never heard it talk about at home at all?

A. No, sir.

113 q. You never heard your father and Mr. Kempner talking about it at home at all?

A. No, sir; the only time I heard of it was the time that they talked about this man Burke, in the office.

114 q. You never heard of it at any other time?

A. No, sir.

115 q. You never heard them talk (about it) in the office?

A. No, sir.

116 q. When Levinson came there, did you know what business he was on?

A. No, sir.

117 q. Did you know these goods had been bought by Mr. Kempner?

A. Yes, sir; because I saw the goods down in the basement piled in a heap; but who they were bought by I did not know.

118 q. You never heard him talk to his wife or any of the family about it at all?

407 A. No, sir.

119 q. Did you ever hear him talk about it with your uncle?

A. No, sir.

120 q. What relation is David Witkowsky to you?

A. He is a cousin of mine.

121 q. He is a son of whom?

A. Of Solomon Witkowsky, sir; an uncle of mine.

122 q. Were you ever in Levinson's store?

A. No, sir.

123 q. Did you ever see this Mr. Burke at all?

A. No, sir.

124 q. You never have.

A. I might have seen him but no to know him.

125 q. You would know him now if you saw him?

A. Yes, sir; I would now.

126 q. Why would you now?

A. Because I saw him on the street, and Mr. Kempner told me that that was that man Burke.

127 q. When was that?

A. Four or five or six weeks after this transaction.

128 q. Kempner told you that that was the Burke that gave that testimony?

A. Yes, sir.

129 q. Is that the reason why you know him?

A. Yes, sir.

130 q. You never spoke to him or had any conversation with him?

408 A. No, sir. I never spoke to him that I know of.

*Direct examination resumed.*

131 q. What did you understand there that the money was paid for?

A. It was paid for them goods that were down there in the basement.

132 q. What goods?

A. Clothing, etc.

133 q. Belonging to whom, and bought by whom?

A. Belonging to Mr. Kempner, and bought by Mr. Levinson.

134 q. Was that what you gathered from the conversation at the time that you spoke of?

A. Yes, sir; from the office, from what I heard there.

135 q. Was this transaction on the same day these goods were brought to the basement of the store or on another day?

A. I do not know what time the goods were brought there; I was not there.

136 q. Was that on the first day of the goods being there that you knew of?

A. Yes, sir.

137 q. If the goods had been brought there before would you been likely to have known of it?

A. No, sir; because I was not down to the store at all evenings.

409 138 q. You do not understand me. If the goods had been brought there on the day previous to that, would you have been likely to have known that they were there?

A. Yes, sir; I would.

139 q. You say that you never saw Mr. Burke until Kempner pointed him out to you on the street?

A. Yes, sir.

140 q. Was there any other persons in that office at the time that money was paid and the receipt given on the invoice, except those you have mentioned?

A. None other.
141 q. Neither Mr. Burke or anybody else ?
A. None other than those that I have mentioned.

*Cross-examination resumed.*

142 q. Did you see whether anybody came in at and went out during that time or not?
A. No, sir; nobody came in.
143 q. Were not persons frequently coming in and going out during that time ?
A. No, sir; not in April.
144 q. You pretend there was no business done at all during April.
A. None at all; nothing to amount to anything.
145 q. Did they shut up the store ?
A. No, sir.
146 q. What did they keep it open for ?
410 A. For manufacturing.
147 q. Who were then engaged in manufacturing ?
A. A boy and two girls.
148 q. Do you remember whether they came in or not?
A. No, sir; they did not come in between hours.
149 q. Do you remember whether they did that day, or not ?
A. I am positive that they did not.
150 q. Do you remember that anybody did ?
A. They went home at twelve o'clock, but came back at one o'clock.
151 q. Why could not other persons have come in there and you not have noticed them ?
A. Because the office is right by the door, and nobody could have come in without my knowing it.
152 q. Do you pretend to say that you notice everybody that comes in ?
A. Yes, sir; I could tell in April. I cannot tell now, because now I am not there.
153 q. What part of the office were you in ?
A. Right by the window.
154 q. That is the front part of the house, is it ?
A. Yes, sir.
156 q. How many windows were there there in the office ?
A. Three.
157 q. Occupying the whole front.
A. Yes, sir.
158 q. Up stairs ?
411 A. Yes, sir.
159 q. Where did you sit ?
A. Right by the window.
160 q. By which window ?
A. The middle window.
161 q. Where was your father's desk.

A. At the last window.
162 q. The east or the west window?
A. The east window.
163 q. Did you sit at the middle window?
A. Yes, sir.
164 q. Where was Levinson?
A. Right by the safe.
165 q. Where does the safe sit?
A. In the southeast corner. In the northeast corner is a table, I think, and he was standing right between the safe and the desk.
166 q. You say you were looking on all the time?
A. No, sir.
167 q. What were you doing?
A. I was looking out of the window, my back was turned.
168 q. You were eating your luuch?
A. No, sir; I had got through with eating my lunch.
169 q. You were simply sitting there looking out the window?
A. Yes, sir.

SOLOMON WITKOWSKY.

412 Subscribed and sworn to before me this 24th 1866.
[SEAL.] JAMES T. ELY,
*U. S. Com'r.*

And the further examination of witnesses in said cause was adjourned to Oct. 31, 1866, at 10 o'clock a. m., at the same place.
Endorsed: Filed Jan'y 4, 1867. Wm. H. Bradley, Cl'k.

413 And at 10 o'clock, a. m. October 31st, 1866, pursuant to said adjournment, the said examination was continued at the office of Goodwin and Larned, in the said city of Chicago, as follows:

*Deposition of defendant, Isaac Kempner.*

Isaac Kempner, appearing as a witness on behalf of said defendant, Isaac Kempner, and Mr. Goodwin as counsel for said defendant, and Mr. Moore as counsel for the complainants; and the said Isaac Kempner, having been by me duly examined and cautioned and sworn, testified as folllows, upon direct examination.

By Mr. Goodwin:

1 q. What is your name, age, place of residence and occupation?
A. My name is Issac Kempner; I reside now at Cedar Falls, Iowa; I keep a clothing store there. I think I am about 47 years old.
2 q. What time during the last year did you come to Chicago; and where did you come from?
A. I came from the State of California; and I came here in about the month of January, as near as I can recollect.
3 q. What funds did you bring with you from California?
414 A. Twelve thousand (12,000) dollars in American gold coin—that is a check for that amount.
4 q. What was your object at that time in coming to Chicago?

A. I came here to see a sister that I have not seen for about twenty-two (22) years.

5 q. Do you know Mr. David Witkowsky, sen., in Chicago?

A. Yes, sir, I do. I have known him before I came to Chicago. I have known him in the city of New York, in the year 1846.

6 q. What connection is he of yours?

A. He is about a third cousin of mine, I think.

7 q. Who was your sister, in Chicago, whom you came to visit?

A. The wife of one David Adams.

8 q. The same man who has been a witness in this case?

A. Yes, sir.

9 q. Who did you visit when you first came to Chicago?

A. The first visit I made, on landing here at this lower depot, I walked up Lake street, and I saw the sign of "Witkowsky," and I went in there first, and he went with me to the store of David Adams, who is my brother-in-law.

415 10 q. When was that?

A. Some time in January; I cannot tell the exact day.

11 q. Do you know John D. Levinson, one of the defendants in this suit?

A. I do.

12 q. Where did you first know him?

A. I seen him once in the year 1857, I think, in the city of San Francisco; and then I seen him in the year 1863, I think, in Idaho; but then I have never spoken to him until I came to the city of Chicago. I was not acquainted with him at all.

13 q. How soon after coming to the city of Chicago did you see Levinson?

A. I think I was here several days when I was informed by David Adams that there was a man that wanted to see me, and he said he kept a place on Clark street. I didn't know where Clark street was, and Adams went with me. I went there and I saw Levinson there and Burke, both of whom I recognized. We had some talk together, and I went away again.

14 q. Did you subsequently purchase Levinson's stock of goods in that store?

A. I did.

15 q. State particularly how you came to make that pur-
416 chase, and detail all the negotiations in regard to it, and all the circumstances of the final purchase and taking possession of the goods and the payment of the consideration.

A. After the first visit to Mr. Levinson I went there again; being an old Californian, of course we liked to talk about California things, and Mr. Levinson proposed to sell me his stock of goods. I cannot tell exactly what time it was; that is, the name of the day, whether it was Monday or Tuesday; that I cannot tell. But he proposed to sell me his stock of goods, and I told him that I would not go into the clothing business under any consideration, unless I could not help myself any other way. But the things went on, and finally—I don't know exactly how long, perhaps a month or six weeks—and I could

not find any place to start in business. I had several propositions to go into business with other parties, but the business didn't suit me; and finally I saw Mr. Levinson once or twice after that, and he kept urging me to buy him out, until I finally offered him 55 cents on the dollar for his stock, and he said that it was not enough; and I
417 told him at the time that I made him the offer that I could do better I thought, and that if he could do better he was perfectly welcome to take any other offer; that the goods were not worth more than that to me. When I made him the offer I believe it might have been two or three weeks before until the actual conclusion of the sale. At any rate I made him that offer of 55 cents on the dollar; and if I am not mistaken—to be truthful about it—I believe he wanted 60 cents on the dollar, and then he came down and said he would take 57½ cents; and I told him I have made him that offer and that I would not give him any more, and that if I hadn't made him that offer I would not give him that. And finally things went on, I don't know how long, whether two or three weeks, and on a Friday or Saturday if I am not mistaken—I am not positive, but I think it was on Friday—I was in company with David Adams; we were going up Lake street, and Levinson hailed me.

16 q. From where?

A. From across the street; I was crossing Clark street, on Lake street, and Levinson hailed me and said that he wanted to speak with him about that business; and I said, "Well, there is
418 no use now of our talking; if I had not made you that offer I would not take the goods, but I don't want to back out; and if you want to take that offer I will take the goods;" and he said that I might have the goods. He said that he could take the money and go into some other business and do better. That was either on Friday or Saturday, and I think it was on Friday—I am not positive, but I think it was on Friday—but perhaps it was not. This thing is so long ago that I have forgotten pretty nearly all about it; but I know that I have been there, in company with David Adams, to examine the goods, to see what they were worth, to appraise them. I was not accustomed to the prices here; I had lived in California for 14 years, and I wanted David Adams to go with me to look at the goods, and I think I went there on a Sunday to appraise those goods; I think I went there on a Sunday; it has been so long ago that I have forgotten all about it.

17 q. State what you did on that Sunday that you went there with David Adams, and why you selected David Adams.

A. Because he was a man that has done business here a
419 great many years, and knew the market value of all sorts of goods belonging to the clothing business; and in the second place, he was a brother-in-law of mine that I could rely upon, and for that reason I asked him if he would not go with me, and I knew that he would not deceive me. After I had offered to Mr. Levinson 55 cents, on a Friday he told me that I might have the goods, and the agreement was made that we were to come around on Sunday and take the stock of goods. That was done at Levinson's request, to

have us come around on Sunday, because he didn't wish to lose a day; he said he could do something Friday, but that if we would come around on Sunday he would not lose a day, and then we could take stock; and myself and Adams, and David Witkowsky, jr., and Mr. Burke and Levinson was present. And I came there on Sunday morning in company with David Adams, and David Witkowsky, jr., was not there in the store yet; so I left Mr. Adams in the store and I went out to see David Witkowsky, jr., and I could not find him, and so I went back; and when I went back David Witkowsky, jr., was there, and we immediately commenced taking the stock down.

18 q. In that connection state all that was said and done on that occasion, according to your best recollection.

A. There was nothing done except to take the stock; Mr. Levinson kept one account, and David Witkowsky, jr., kept the other account, and the clerk, Mr. Burke, went on and called out the goods as per the mark upon the ticket; so many pair of pantaloons, at so much; and so many coats, at so much; and so many vests, at so much; and so on, and they were set down by Mr. Levinson on one paper, and by David Witkowsky, jr., on the other paper.

19 q. [Handing witness Exhibit "A."] Is that one of the papers made on that occasion?

A. Yes, sir; that is the identical paper that Mr. Levinson put down the things on. This is his handwriting, and I saw him do it myself.

20 q. Proceed.

A. Well, we commenced taking stock; I should think it was 9 o'clock, and we got through just a little before one o'clock; I am positive it was not one o'clock yet, because David Witkowsky, jr., had an invitation to go to dinner on that day with a certain party, and he wanted to get through by that time; and he wanted to go away sooner, but I urged him to stay, and he staid, and he went away about that time, which was in time for him to go away; and myself and David Adams went away together, and I believe Mr. Levinson and Mr. Burke remained in the store; in fact, I know they did remain in the store.

21 q. State, if you know, what arrangements were made in regard to taking possession of the goods, and the payment of the consideration money.

A. The arrangements made between myself and Levinson was these: That I should come around on Monday morning, and that, if he was not there, Mr. Burke would be there to deliver me those goods, and upon the delivery of the goods, that I was to pay the amount agreed upon, whatever they should amount to.

22 q. At what rate?

A. At 55 cents on the dollar.

23 q. Have you stated all that took place, according to your recollection?

A. Well, during the taking of stock, it is impossible for me to remember all these things; but during the taking of stock,

my brother-in-law, David Adams, and also David Wilkowsky, jr., made the remark, that some of the goods were very high, to which Mr. Levinson made the reply, that they cost him that much; and that he could show the bills for them. But he never showed any bills, but I took it for granted that every merchant marks his goods according to the invoice prices. And so I told my brother-in-law to say nothing about it. There is one article one man may buy a little cheaper, and another may buy his, and pay a little more; but as a general thing in the clothing and the dry-goods business especially, they are marked whether it is clothing, or merino, or alpaca, or anything else, they are marked according to the invoice, just what they cost; and I took it for granted that Levinson's goods were marked according to the invoice in the usual way, and I told my brother-in-law to say nothing about it.

423 24 q. What was done if anything in regard to the keys of the store when you got through?

A. Mr. Levinson gave me one of the keys. There were two keys to the store; I don't know whether Mr. Levinson or Mr. Burke retained them, I cannot tell. There were two keys. I know they remained in the store and consequently they must have had one of the keys. I know there were two keys, because Mr. Levinson said so. Mr. Levinson had one key and Mr. Burke had the other and Levinson gave me one of the keys.

25 q. For what purpose did he give you one of the keys?

A. I cannot tell for what purpose it was. It really didn't do me any good, for I didn't enter the store until Monday morning, and when I went there Mr. Burke was there. I didn't go back to the store until Monday morning.

26 q. State what else occurred.

A. Monday morning between the hours of 8 and 9 o'clock, I think it was, it might have been pretty near nine o'clock, I went to the store and I had either six or seven express wagons. I cannot state positively whether there were seven, but I am sure I had six

424 wagons there, and we loaded the goods on them and took them to the basement of No. 77 Lake street. After I had all the goods removed and placed in the basement then I proceeded to try and get the money for the payment of the goods. I had a check here that I could draw on a house in New York for that amount, but I had to go and got two parties to endorse that check for me so that I could draw the amount of money that I wanted, and I got one Isaac Knox to endorse the check and one S. G. Witkowsky also to endorse the check. They both endorsed my check and I went to the place alone, Greenebaum's. There is a banking house, I really don't know the name, and I went to that banking-house, and they either didn't have the money or perhaps they didn't want to accept that check, so that I went down to Henry Greenebaum and Henry Greenebaum accepted that check, but he didn't have currency enough in the house to pay that amount, so he gave me a check for two thousand dollars on this banking-house down here, I think the third National Bank. I came here with the check and the two thousand dollars was paid to

me, and then I went back to David Witkowsky's office with
424 this two thousand dollars and put it into the drawer, and then I went away to some place, I don't know where, but I went out somewhere, and Mr. Levinson came around and I heard he was looking for me, and I got back and found him there, and David Witkowsky gave him the two thousand dollars in currency and made out the check; he took the two thousand dollars in currency and he had brought with him a check made out for the balance of the money on Greenbaum. I believe the check was made out payable in favor of Leopold and Que. When David Wilkowsky paid Levinson the money, this document, "Exhibit A," on the desk, and David Witkowsky asked Mr. Levinson to sign this for the amount that was paid to him, that is for 55 cents on the dollar, and Levinson replied that it didn't make any difference since it was signed, and that it didn't make any difference whether it was signed for 55 cents or whether it was signed dollar for dollar, and David Witkowsky said, "You had better sign it for what you have actually received, for 55 cents on the dollar," and he says, "It is already signed and it don't make any difference as long as it is signed."

425 27 q. Whose handwriting is that, "Received payment?"

A. It is Mr. Levinson's. I saw him do it. He stood there at one corner of the desk, and I stood at the other, and I saw him do it. There was myself and David Witkowsky and the boy Witkowsky and Mr. Levinson was present, and no one else was present at that time. After he received the money and his check he departed.

28 q. When was that head written, and who wrote it as it appears now to that "Exhibit A?"

A. The head was written on the Sunday, the same day that the inventory was taken.

29 q. Tell me when the words "Mr. Kempner" were written?

A. On the day when he received the money, on Monday, it was down at Mr. Witkowsky's office; you can see that it is in different ink.

30 q. How did you come to take these goods to the basement of No. 77 Lake street?

A. Well, sir, I went to a man by the name of Stine, a merchant. I don't know where he keeps, but it is on a corner somewheres on Lake street. I don't know the name of the street, but he had a place somewheres up here on Lake street, and he had removed, and I went there for the purpose of renting it until I could assort
426 these goods, but he asked some $10 per day for it, and I found it rather too high, and I could have the place of Mr. Witkowsky gratis, and so I took the goods to Mr. Witkowsky's place; that is the reason that I took them there.

31 q. For what purpose did you make the purchase and for what purpose did you look for a place of deposit?

A. I made the purchase of the goods for the purpose of going in business myself; but as yet I had no store on hand where I could deposit those goods, so I took those goods to a place where they could be deposited safely, and packed them up, and secured them, and in-

sured them, until I could find a place where I could take them, and do business with them.

32 q. Where was that?

A. Well, I intended at that time to go to Quincy, in Illinois, in this State. I had inquired of everybody, and I even asked Mr. Barry whether he could not recommend me to a place to go to do a business. He had business all through here, and had customers all over the State, and I asked him, and he informed me that there was a place called Fairbury, and he informed me that if I went there, I could do well; but I was willing to go to rather of a larger place; so
427 I come to the conclusion to go to Quincy. After I had purchased those goods on Monday, there was a great deal of talk and a geat deal of noise about the city of Chicago that such and such a thing had taken place, and I believe that the day following Mr. Barry, if I am not mistaken, came down to the basement, where I was arranging those goods, and wished to look at them. Mr. Witkowsky came down with him, I think, and introduced him, and he said that Mr. Levinson owed him, and I said that he could have all of them if he would give me $1,500 for the goods. Then there was such a talk about the stock, and that I had made such a great bargain, and that I was willing to sell them to him if he would give me $1,500 for the bargain, and he told me that he would consider about it, and let me know. And I believe it was several days later; it must have been between 7 and 8 days; I should think seven, because I know that I sent to New York for two young men to come and work for me, and they arrived, and then and there Mr. Barry came to me, and asked me if I would take $1,500 for those goods; but he didn't offer to give me that amount. He wanted to know if I would take $1,500, but he didn't offer to give me that amount. If he had said he
428 would give me $1,500 for them, I would have took it, and I said, "No;" and I said I would take $2,500 for them now, because I had packed them up, and I had got two young men here under my expense, and I had had to pay their fare here, and that I had got the goods packed, and that I would not take less than $2,500 now, and Mr. Barry made the remark, "Why you have raised on them." "Yes, sir," I said, "if I hadn't packed them up, and hadn't on hand these young men to come here from New York, I would sell the stock to you just as I said before."

33 q. When you went with David Adams to the store of Levinson to examine those goods, how thorough an examination did you and Adams make of them on that Sunday?

A. We did not make a very particular examination, but we examined the stock of goods like most experienced merchants would do —to look over an article of this and an article of that and an article of another. We did not examine every article in the house;
429 but just as I say, an article of this and of that and of another.

34 q. What conclusion did you come to about what would be a fair value of those goods to purchase the whole of them for cash?

A. I did not come to any conclusion at that time at all, until I was informed by Mr. Adams that those goods were not worth more than

50 cents on the dollar, at the utmost, not over 55 cents; and he said that he would not pay more than 50 cents on the dollar for them. Perhaps he had no use for them, and did not wish to buy them.

35 q. After you were so advised, did you come to that conclusion yourself?

A. I did; and I might take those goods even by paying five cents more for them, and take them into a retail store, and peddle them out, and make a little money on them, and the consequence was I offered him 55 cents on the dollar for them.

36 q. What is now your opinion as to the fair value of those goods at that time, under all the circumstances.

A. Well, I do not think now that they are worth any more money than I gave for them at that time, considering that I paid out pretty near $10,000 cash, and had no credit at all. I think I could
430 have went almost to any regular business house, and invested my money, and done better than I have done, for I have got in that stock of goods—goods that must have been at that time on hand perhaps five or six years in the store if not longer.

37 q. You mean for permanent going on with your trade?

A. Yes, sir.

38 q. What was the nature and character of the stock, as ascertained at that examination?

A. Well, sir, the nature of that stock was just this: there was some very nice goods and some very poor goods, and some of the nicest goods, I suppose, that if I had taken the money, and went to buy them for cash out and out, I suppose that I could have done better than I did, and then there were some other goods that really are not worth—well, really, I would not give 25 cents on the dollar for them with my present knowledge that I have gained here of the business.

39 q. When you went into Levinston's store on Sunday, the eighth (8th) day of April—the day before the sale—to take the stock, state whether before you commenced taking stock, or at any time while there, you asked him how much he owed to Friedlander or
431 to any other creditor, and also whether he stated to you the amount that he owed to Friedlander or to any other creditor, or whether there was any conversation to that substance and import.

A. When I entered the store prior to taking the stock, I entered with David Adams, and David Witkowsky was not in there, and I said, "Is David Witkowsky in there yet?" and they said no. I walked about and went to look for him; I could not find him, and I went back, and when I got back to the store David Witkowsky was there, and that is all the words that passed between myself and anybody in that store. I merely asked, "Is David Witkowsky here yet?" and they said, no, and I turned right about and left David Adams there, and when I got back, David Witkowsky was there, and Levinson had this article (Exhibit "A") already prepared, and I said, I want another one, so that David Witkowsky can keep an account, and he went and tore some leaves out of a book, and I said, "Why do you do that? Why do you not let me have the book," and he

said, because there is something there that I do not want anybody to see, and I believe the copy that David Witkowsky took and wrote on is somewhere in my trunk now; that is all the conversation that took place between Levinson and me, except when the others were present and we were taking the stock.

40 q. During the time that you were taking that inventory, did you ask him how much he owed Friedlander?

A. No, sir; I never asked him any such a question or anybody else; and if I had had any idea that he owed Friedlander or anybody else I would not have bought. I never had any idea that he owed anybody until he was arrested.

41 q. Was there any conversation there about his creditors on that occasion?

A. There was not any to my knowledge.

42 q. State whether then, at that time, you said to him, or in the presence of any of them, or of any parties there, that Little Coleman would have to suffer?

A. I never mentioned Mr. Coleman's name. I do not know whether his name was mentioned at all; if it was, it was not mentioned in my hearing. I never mentioned Mr. Coleman's name, or Mr.
433 Friedlander's name, for I had no knowledge that he owed anybody; I did not dream of it.

43 q. If Coleman's name was mentioned there, state whether it was in any connection with any such idea about his having to suffer.

A. No, sir; I do not know that his name was mentioned in that connection, or in any other connection. I did not hear his name at all. If it was mentioned I did not hear it.

44 q. Was there any bills of goods or any bills of purchase of goods exhibited to any parties there on that occasion?

A. Not to my knowledge, I have not seen any. I have never seen any bills through all that transaction belonging to any party, to Friedlander, or to Coleman, or to anybody else.

45 q. Do you recollect that at the time that inventory was taken, or on any previous occasion on the negotiations for the sale, your asking Mr. Levinson how much goods he had bought in New York, and that he told you in answer, in the neighborhood of $12,000, and that you said that you wished he had bought $30,000 worth, and that you would have gone in with him?

A. No, sir.

434 46 q. Was there any conversation in regard to that in substance and effect?

A. No, sir; I never had any conversation with Levinson of that kind or to that effect.

47 q. Do you know one Morris G. Burke?

A. Yes, sir, I do.

48 q. Was he the clerk referred to by you who was in there with Levinson?

A. Yes, sir; he was the clerk.

49 q. State whether, whilst Levinson was gone to New York, you had a conversation with Mr. Burke, and whether you said anything

to him in substance or effect like this: that this would be the last time that Mr. Levinson would buy goods, as he was not suited to the business.

A. I do not think I have been in the store of Mr. Levinson whilst he was in New York. I staid principally in the house as much as I could; I, not being accustomed to this cold weather, staid principally in the house, and I went out very little, because my feet could not stand the cold weather. I left from California where the weather was very mild. In fact I have never been to the store of Mr. Levinson whilst he was in New York, and I did not even know that Mr. Levinson was in New York until lately, when he got back,
435 and he then told me he had been in New York.

50 q. State further, whether after Levinson returned, he informed you in any conversation of the amount of goods which he had bought in New York, and whether in such conversation you stated you wished he had bought $30,000 worth.

A. I do not remember having any conversation with Mr. Levinson to that effect at all after he returned from New York, or at any previous time. In fact I had no such conversation with Mr. Levinson.

51 q. In any conversation that you had with Mr. Levinson previous to the sale, and previous to the taking of the inventory, did you ever state to him, and remark to him in substance or in effect, that Little Coleman would have to suffer?

A. No, sir; I never made any such remark to Mr. Levinson; I never made any such remark to him. If I had known that Mr. Levinson owed Mr. Coleman or Mr. Friedlander, I should have been apt to have informed them of any such transaction, if any such was about to take place, in preference to doing as parties have supposed I did; I certainly should have informed both Mr. Friedlander and Mr.
436 Coleman of any such thing, because I have been intimately acquainted with Mr. Coleman, and also with Mr. Stick, one of the complainants.

52 q. State whether not, after this sale, you had a conversation with Mr. Burke, in which you stated to him that you gave your clerk $1,500, and a good chance when you failed. State whether you had any such conversation in substance, or to that effect.

A. No, sir; I never had any such conversation with Mr. Burke with regard to it. Mr. Burke would have been the last man that I should have used any such language to; I know him too well.

53 q. State whether or not, at any time before that sale, you went into the store of Levinson, or met him elsewhere, and used any such language as this: "That there is some pretty rough talk in town about you, and you had better not delay the matter; you had better let him have the things, and put the money in your pocket, and let the creditors go to the devil," or words to that effect.

A. I have not made any such remarks to anybody, either to Mr. Levinson or to anybody else whatever.

54 q. Did you ever, in any connection, make any such remark to Levinson to that effect?

437 A. No, sir, I never did. But at one time I met him on Lake street and he said, "Why did you circulate that report that I am about to sell out to you at 55 cents on the dollar?" and I told him that I had made no such report at all; but that I could take him to an honest man who gave me that information, and I took him to David Wiltkowsky. I never circulated any such report about him, but I had heard that he was going to sell out, and I told him from where I had got that report. I told him I had no such inclination, and that in fact I did not wish to go into the clothing business in any way whatever; that I hated the business, and that I had made no such report.

55 q. About when was that? About what time was the negotiations in refference to the sale?

A. That might have been, perhaps—well, to be truthful about it, as near as I can—it might have been about eight or ten days before the time of the sale. I could not tell exactly. It is so long ago that I cannot trust my memory altogether. At that time it was in my memory; but now it has slipped almost altogether with regard to their dates.

438 56 q. Do you know Louis Friedlander?

A. I do.

57 q. How soon after the sale did he come here?

A. I think about the twelfth or thirteeth—I would not be positive—about three days later, after the sale took place.

58 q. Do you know whether John D. Levinson was arrested after the sale?

A. He was arrested the same evening, I believe.

59 q. On whose complaint?

A. I was informed, and in fact I know, because I have seen the warrant, that the complaint was made by a man by the name of Rosenthal.

60 q. Who is he?

A. He is a connection of one Stick, who is a partner of Friedlander's. He lives in north Clark street now, or at least he did at that time.

61 q. Look at the paper annexed in this affidavit, and at the schedule thereto attached, marked No. 1, and state whether or not that is an examined copy of the warrant and its endorsements found by you and examined by you, in the office of S. B. Brown, esq., justice of the peace, in the city of Chicago.

A. Yes, sir; I believe it is the same warrant. I went there in company with Mr. Goodwin, jr., and found this warrant there.

62 q. Whose handwriting is that copy in?

440 A. I believe it is the hand-writing of Mr. Goodwin, jr. I think I saw him do it.

63 q. What time did Friedlander leave town for home?

A. I think I met him in front of some hotel here, with large, long pillars before it—yes, that is it—it is called, I think, the Tremont House—that is the name. I think that I met him on Saturday, and I spoke to him in front of the Tremont House, and he made the re-

mark to me, "You are getting rich off from my money;" and I said, "Mr. Friedlander, I am very sorry you are to be the loser in this case. If I had known Levinson owed you, I should have telegraphed to you. But I was innocent of the whole entire matter." I was there on Saturday, and he told me that he would leave that night.

64 q. Was Burke present at all, at the time the money was paid and the receipt given?

A. No, sir; no one except myself, David Witkowsky and his son, and Mr. Levinson were there. Mr. Burke was not present. There was not anybody else present there whatsoever.

65 q. Did you at that time, or at any time, say to Mr. Levinson that you wanted the receipt made on the bill for the full amount of the invoice, so that you could say to the creditors that you
441 paid, dollar for dollar, the amount of the goods.

A. No, sir; I have not made any such remark to Mr. Levinson or to anybody else. I made no such demand of Mr. Levinson. I made no demand on him for a receipt at all. The only demand that was made on him for a receipt was made by Mr. David Witkowsky to give a receipt for 55 cents on the dollar—that was the only time there was any such demand made on him.

442 *Cross-examination of defendant, Isaac Kempner.*

By Mr. Moore:

66 q. What part of Germany did you come from?

A. I didn't come from Germany. I came from Poland. I am not a German at all.

67 q. When did you leave Poland?

A. I landed in New York in the year 1846, in September some time.

68 q. How long did you live in New York?

A. I lived there but a short time.

69 q. About how long?

A. Perhaps six months.

70 q. Then where did you go to?

A. When I landed in New York I had no money, and I could not speak English, and I had no friends, and I went to work in a flat-boat and unloaded coal for six shillings a day. From there I went to a place in Jersey—I believe they call it Trenton—where I worked for a furnace, smelting pig-iron, and I found that the work did not agree with me, and then I left and went to New Orleans. When I landed in New Orleans I was engaged by a man I met on the street, and he asked me if I didn't want a situation, and I said "Yes;" and he gave me a situation at $15 a month and I went to work for him.

443 71 q. In what business?

A. In the clothing business.

72 q. How long did you remain with him?

A. I didn't like that man at all, and I staid with him only three

weeks, and then I got another situation at $35 a month, also in a clothing store on Charles street, and I staid with him three months, and then I left, and went into another situation where I got better wages, and I staid there with him about a year. He gave me $1,200 worth of goods and took my note for it, payable in twelve months, and I went to Memphis; and I was very young, then, and was not able to do business on my own account, and I sold those goods out, and sent the man back the money, and I never even made a demand upon him for my note.

73 q. When was you in Memphis?

A. Just about the close of the Mexican war.

74 q. Then where did you leave for?

A. I left then and went to Saint Louis, and I clerked it there; and from there I went back to New Orleans.

75 q. How long did you stay in Saint Louis?

A. I don't recollect. I may have been there nine months, or so.

444 76 q. How long did you stay in New Orleans when you went back there?

A. I wanted to go to California but I was taken sick with the yellow fever, and was laid up somewheres in the nighborhood of a year or so in the charity hospital. When I got well I got my old situation back, where I was before, and I staid there awhile; and then I had $45 left, and with that I started for California.

77 q. In what year?

A. I think it was in 1851 or 1852.

78 q. What part of California did you then go to?

A. San Francisco.

79 q. What did you do there?

A. After I landed there, a man by the name of Lask came to me and offered me $150 a month, and I worked for him one month.

80 q. At what business?

A. In the clothing business.

81 q. What did you do then?

A. After I left him I got me a horse and dray and worked at that for a living for some time. I drove a dray quite awhile, and made some little money, some $1,500 at that, and then I quit that business.

82 q. What did you do next?

A. I went into a clothing store.

83 q. How long did you continue that there?

445 A. I continued in that business since I commenced it there in California; not in the same place; I kept a moving, but since I commenced it there I continued in it. I went to Marysville, and I went to Forest City, and then I went to Idaho City.

84 q. But you have always been in the clothing business since that?

A. Yes, sir; I have been in the clothing business and at the same time the dry-goods, and boots and shoes, and a general variety. I have always been in that business though, particularly. I have never

gone to anything else. I never was a horse-jockey, and know nothing of that kind, but just I was always in that business.

85 q. What country did Levinson come from?

A. I cannot tell; I don't know what countryman he is.

86 q. Is he German?

A. I don't know whether he is a German, or a Frenchman, or an Italian.

87 q. Do you know what language he speaks?

A. I never heard him speak any other language but the English. I know that he is an Isrealite by profession. I knew his father, and he was a Jew, and consequently he must be one too.

446 88 q. Where does his father live?

A. In San Francisco.

89 q. Is he still living there now?

A. He may be, I don't know.

90 q. Where did you first meet Mr. Levinson, was it in California?

A. The first time I saw Mr. Levinson in California, I believe, was in the year 1857, but from that time I have not seen Mr. Levinson until about the year 1863; it was then I met him or saw him in Idaho, and I have not seen him since the time that I met him in California, until the time that I saw him in 1863, in Idaho.

91 q. What was he doing in San Francisco?

A. I think he was a clerk in a wholesale house.

92 q. What kind of a house?

A. Clothing house.

93 q. How long was he engaged as a clerk there?

A. I cannot tell you, I don't know, sir; I don't know anything about it.

94 q. Do you know of his engaging in any other business there?

A. I don't know whether he was, but I was told—at least I was not told, but I have heard it spoken about—that this Mr. Levinson kept a billiard saloon and a gambling saloon in Yreka, Ciskan

447 county. I don't know how that is, and I have not been up there, so far, but I have heard that talk. I never had anything to do with him in my life. In fact, I never had spoken to him until I came to Chicago.

95 q. You met him in 1863 in Idaho, I understood you?

A. Well, sir, I did'nt mean to say that; I meant to say that I saw him, but not that I met and talked with him.

96 q. Where did you meet him?

A. In Idaho city.

97 q. What business was you engaged in?

A. I was keeping a clothing store, and boots, and shoes, and hats, &c.

98 q. What was he doing?

A. I don't know. He was always dressed well, and was going about smoking good cigars, he was. I heard that he was dealing faro, but I don't know myself. I never went to a gambling house and I never saw it, but that was the general talk. If it was not so, I don't know, but I can say for certain that was the talk. If it was not for a certain

party that knew him in Yreka, I should never have known that; but I met that party, and that party said that he was there, and said what he was doing there, and otherwise I shouldn't have paid
448 any attention to it, or to him more than any other man that I met along the street here. I didn't know the man except by seeing him, and knowing him in that way.

99 q. Then you never knew anything about him until you met him here?

A. I never spoke to him, I only knew him until I came to the city of Chicago, and I should not have known him then only that he came and hunted me up here.

100 q. Where did you know Mr. Coleman?

A. In the city of San Francisco; he was a neighbor of mine.

101 q. In what business was he?

A. He was in a clothing store, in the firm of Michael and Company.

102 q. Is Coleman an Isrealite?

A. He is.

103 q. Where did you know Friedlander?

A. In California.

104 q. Where did you know Stick?

A. In California.

105 q. Is he also an Isrealite?

A. Yes, sir; the firm was Stick, Friedlander and Company. I have bought goods of them myself at wholesale.

106 q. Was Coleman's also a wholesale establishment?

449 A. No, sir; it was a retail store.

107 q. Did you buy goods of him?

A. No, sir; I never did, and I haven't seen Coleman for pretty near ten years, perhaps not quite so long, perhaps a little longer. If I had known where he was in New York, I should certainly have called to see him, because I consider him and Friedlander good friends to myself.

108 q. Then you haven't seen him, you say, since you knew him in California?

A. No, sir; I have not.

109 q. Did you know Mr. Burke in California?

A. Yes, sir.

110 q. Where?

A. In the city of San Francisco, he was most all the time.

111 q. Do you know when either Mr. Burke or Levinson left California?

A. No, sir; I do not. I don't know anything about it.

112 q. This entire bill, "Exhibit A," with the exception of your name "Mr. Isaac Kempner," "received payment in full," (pencil marks,) and Levinson's signature thereto, was made out and brought there on Monday, by Mr. Levinson, that morning; was it?

450 A. Yes, sir.

113 q. And these things, the receipts and your name, were written on that day?

A. Yes, sir, after Mr. Levinson received the money.

114 q. At Mr. Witkowsky's office?

A. Yes, sir; it was footed up on a separate piece of paper, and then they set it down here; and then they receipted it at Mr. Witkowsky's office. The footings were brought there at that time in the office on Monday. The footings were not put down on Sunday. Levinson said he would take it home and foot it up, and on Monday, after he received the money, he set this down: "Mr. Isaac Kempner," and also, "Received payment in full." That he did at the office of Mr. Witkowsky on Monday. The footings were not made out there on Sunday. The footings were put down in the store, but they were not then footed up at the end of the pages.

115 q. Where were those extensions carried out?

A. I suppose at a different time those must have been carried out elsewhere. I know they were not carried out at the time. I
451 know that David Witkowsky carried out his afterwards, and not at the time that they were set down in the store. The extensions were done on Monday, and perhaps I do not know when they were done; but it was when he came there in the store on Monday, and then they were all carried out; may be it was done the next morning, may be it was done Sunday afternoon; but when it was done I do not know; but it was not done at the time we were there on Sunday. I cannot say exactly when they were done, but they were not done then.

116 q. Do you know whether it was done by Levinson or Burke, those extensions?

A. No, sir; I could not tell the extensions when they were done, but I know the handwriting.

117 q. Are you certain that Witkowsky did not carry out any of these papers at all?

A. Yes, sir, I am. It was all completed when it was brought over there, and Witkowsky made none of these figures at all; he made not a single figure that is there. ("Exhibit A.")

118 q. On the day that you paid the $2,000, and gave to Levinson a check for the residue of the purchase, did you see him on
452 that day at Witkowsky's after that time? Did you see him on that same day on Monday, after you paid him the receipt at Witkowsky's store?

A. Not to my recollection. I cannot say whether he was back there again or not. I do not remember whether he was or not. I am not prepared to say whether he was or not; but I did not see him there the same day at Witkowsky's office.

119 q. Do you remember of meeting him that day anywhere after you paid him the money?

A. No, sir, I do not.

120 q. Do you not remember that he came back claiming that there was some mistake in the counting of the money, or in the counting of the check, or something of that kind?

A. I was not there when that happened. I did not see him when that happened. I was informed that he came back about something of that kind, but I was not present then. I was not in the office

when he did come back. I am very positive that I was not. I do not think that I was; I know that I was not.

121 q. What time did that payment take place?

453 A. When I paid him the $2,000 it must have been about twelve o'clock; it may have been a little later than that, and it may have been a little earlier than that, but it was just about that time. I know that it was noon time.

122 q. You think it was earlier than twelve o'clock?

A. I am not positively prepared to say when it was; any way it was at noon time; it might have been either five or ten or fifteen minutes one way or the other. I cannot say when it was positively.

123 q. Was Levinson in California a man of capital?

A. Not that I know of. I do not know whether he was rich or poor. I know nothing about the man whatsoever, any more than you do; that is, I do not know anything about him there any more than you do.

124 q. This room, where the money was paid at Witkowsky's office, is up stairs, is it not?

A. Yes, sir.

125 q. The front part of the room?

A. Yes, sir; the front room.

126 q. Is there a stair case going up there?

A. Yes, sir; you go right up outside from the street.

127 q. That is, you go up and enter right from the street

454 up stairs?

A. Yes, sir.

128 q. You do not go through any of the lower rooms in order to get into that room?

A. No, sir.

129 q. You do not go through any other room below in order to get up into that room?

A. No, sir.

130 q. You go right up stairs and go right in?

A. Yes, sir; you go up stairs from the south side of the street, and go right south up stairs, and you go in at the side door, at the head of the stairs, and then you turn around and you turn towards the north, and in the north part of the building, in front of the building is this room, where there is a desk. There is a little railing there, and the room partitioned off by that railing. I should think that was about seven and a half feet or eight feet wide. I do not think any more.

131 q. In the main room there was counters and shelves?

A. Yes, sir; counters, and shelves and boxes, where the goods are stored; at that time I think there was not any boxes in the centre of the room; now there are, where they keep their furs.

455 132 q. What time did you commence removing these goods?

A. I think it was at about 9 o'clock, if I am not mistaken, somewhere in that neighborhood, between 8 and 9, because I lived on the corner of 12th street and Michigan avenue, and I got breakfast at about seven o'clock; that is the hour for breakfast; then I went

down and walked all the way along on Michigan avenue until I came here on Randolph street, and then I went along to get these express wagons, and was looking for parties to assist me to remove these goods, and I was bothered there some time. I wanted somebody to help me to see that there would not be any stealing, and I know it took me quite a time, and it was, I know, between 8 and 9 o'clock, at any rate; and I know it was not earlier than eight, and it must have been from that to nine o'clock when I commenced removing those goods.

133 q. You boxed up the goods in the store before you moved them?

A. Not at all; there were a few old coats that Levinson did not want, I suppose, to expose for sale. They were boxed there,
456 but just as the goods were taken down from the shelves they were put right straight into the express wagons.

134 q. Were they wrapped up in paper?

A. No, sir, they were not; the wagons were clean, and the expressmen had blankets; and it was a very fine day, [day,] as it is to-day, and there was no danger of their getting wet, or of their getting hurt.

135 q. They loaded how many?

A. Well, sir, I should think six or seven loads.

136 q. Well, how many loads did they take?

A. Well, I do not know positively whether there were more than six; I cannot tell you; I think there were six at any rate; and there might have been seven.

137 q. Who did you have there to see about the carrying of those goods?

A. Mr. Burke was there; and these other men were there; and a man by the name of Adler was there, standing out doors. I went and met him, when I went for the wagons on Randolph street, and I said to him if you can help me now just do so; I do not want you to do anything but just to see that those goods are put in the wagon, and that they did not take any away. I did not want him to assist me in moving, because he is a one-armed man, and would not
457 have been any use any way; and I know that he stayed there quite a while; he was there when I went away; but how long he stayed there I do not know.

138 q. How long did it take to put these goods in the wagons?

A. I do not know exactly. I should think we were about an hour, if not more.

139 q. You think it was about an hour?

A. I should think it was about an hour.

140 q. And then you took them directly to Lake street?

A. Yes, sir; I took them right along as soon as they were loaded.

141 q. Who were at Levinson's store that morning?

A. When I came there I found Burke there.

142 q. Was the store open?

A. No, sir, it was not open; the front door was closed, but Burke was inside. If I am not mistaken, the cutter, a man that used to

work for him, was there; but of this I am not positive; but I know that Mr. Burke was there. I know that I saw him before I entered the store; because the doors were glass doors and I saw him through the window.

458 143 q. Who is that cutter?

A. He was an Irishman; I do not know his name; I do not know who he is.

144 q. You do not know anything about him?

A. No, sir.

145 q. Had you ever seen him there before?

A. Yes, sir; previous to buying the goods and removing them I had seen him. I had been in there before. I had been in there once or twice to buy collars for myself and I had seen him there working.

146 q. How long before that—how long have you seen him there?

A. Perhaps twice or thrice; but I have seen the man frequently on the street before and after—that is, I saw him during the time that I was negotiating with Mr. Levinson. I saw him on the street; and of course I was not acquainted with him, and I did not pay any attention to him; he was a stranger to me and I do not know him, and did not pay any attention to him.

147 q. Was Levinson there that day when you were removing the goods?

A. No, sir; he was not there at all when we were removing. It was agreed upon Sunday that either he should be there, or
459 else Mr. Burke would be there; and Mr. Burke was there, but after the goods were removed he came along.

148 q. Did you know where he was while the goods were being removed?

A. No, sir.

149 q. When he came along, where did you first see him?

A. The first I saw of him was when we were unloading the goods and taking them down to the basement of 77 Lake street.

150 q. Was that the first you saw of him after Sunday?

A. Yes, sir; that was the first.

151 q. Was that the first you saw of him after you left the store the Sunday after taking the invoice until you saw him there, did you say?

A. Yes, sir; that was the first after I left the store on Sunday until I saw him when we were taking the goods down into the basement.

152 q. Then the next time you saw him was when he came for the money?

A. I saw him a moment when we were taking the goods down in the cellar, and he asked me "When will you pay me that
460 money?" And I said, "I will pay it as soon as I can get it; but if you will call upon here at twelve o'clock I will pay it to you."

153 q. And you think it was about twelve o'clock that he came there?

A. Yes, sir; I think so; it might have been ten or fifteen minutes before, or ten or fifteen minutes later; but at any rate it was about noon; it was not much earlier or later, but was somewhere in that neighborhood.

154 q. Do you remember on Sunday when there was some question made about the prices of goods being too high?

A. Yes, sir.

155 q. Do you remember there was something said about some people's money that was not so good as others, and about some people's credit that was not as good as others, and therefore that they have to pay a higher price?

A. No, sir; that would be a foolish remark; one man's money is just as good as another man's money; a dollar is a dollar anywhere. Some men's credit might, perhaps, not be as good as others; but their money would be just as good as any other man's.

461 156 q. Don't you remember that Mr. Adams was objecting to the price of some of the goods frequently; that he frequently objected to the price of some of these goods?

A. Yes, sir; he said that some of the goods were very high; but he was not buying; it was me that was buying. He said they were very high; I remember that.

157 q. Don't you remember that he made such remarks as that, and that it excited Levinson very much; that he got quite vexed at him about it?

A. No, sir; not to my memory. Everything went off very nice and quiet, and in a perfectly gentlemanly manner. There was nobody excited there to my knowledge. I know I was not. Levinson was standing by the counter most of the time taking the figures.

158 q. You don't remember, then, of any excitement at all?

A. If there was any I didn't see it.

159 q. Don't you remember that Mr. Adams spoke to him, that some person's credit was not so good as others, and therefore they have to pay higher prices?

462 A. No, sir; I don't remember that. If he did remark that I would know it; but I didn't hear it. In fact, I don't think there was anything of that kind said there at all; I didn't hear it; maybe there was; but I didn't hear it though.

160 q. At the second conversation that you had at 77 Lake street with Mr. Barry, when you said you must have $2,500, what did you say about selling them at a hundred cents on the dollar?

A. I didn't say that I told him that I would sell them to him at $2,500. I didn't say that I must have $2,500, that would be a compulsion. I said I would take $2,500, because I had them packed up; I had bought some $15 or $16 worth of boxes to pack them up in, and I had got two men on from New York, that were waiting for me here, and I told them I could take those goods and peddle them out, and by waiting two or three years, that perhaps I could get dollar for dollar for them. I think that is the exact words. Perhaps there is one or two words different, but it was about that.

161 q. What did you say there, at that time, about any goods having been bought on credit to Mr. Barry?

A. Well, if I talked anything of that kind to him, I don't
463 remember it; although I had a right to suppose that they had been bought on credit some of them, because I had then found out that Levinson had been buying goods on credit, and owed creditors.

162 q. What did you say about the fact that Levinson had bought and paid high prices for these goods originally?

A. If I said anything of that kind, it must have been in the same words that you say now; that he had bought and paid high prices for them. That is all that it could have been. I don't remember what it was.

163 q. Did you give any reason for his having paid high prices to Mr. Barry?

A. I don't recollect that I did.

164 q. Didn't you say anything about his having bought them on credit?

A. No, sir, not to my memory. It may be that I have, but I don't remember; it has been so long ago that I don't remember, but I had a right then to suppose that he had bought them on credit, because I found out that he had been buying goods on credit, and was owing men.

165 q. Did Friedlander, or Stick, and Coleman, and Levinson know each other in California?

464 A. I don't know whether they did or not. I don't know whether they were acquainted with him. I cannot tell about that any more than you can. I don't know—maybe they did, and maybe they were not acquainted.

166 q. Where are those goods now?

A. They are in a storehouse.

167 q. What house?

A. I don't know the number; I cannot tell you what that is; it is a street on the corner of Lake st. I have got them insured for $1,500 in the house of New York, and some other company.

168 q. They are stored with whom did you say?

A. They are on Lake street; I don't know between what streets they are. I believe the house they are in is owned by Isaac Marks. I stored the goods with a man by the name of Isaac Marks.

169 q. At his clothing store?

A. No, sir, not in his store at all, but he has the fourth loft up there, and they are in that. There are betwixt 18 and 19 cases of them, I believe.

170 q. What caution in boxing them did you use to keep the moths off?

A. When the court granted an injunction on these goods,
465 I unpacked them, and sprinkled pepper very freely over them, and stored them on the shady side of the house, so that I think they will keep well without any hurt, I think.

171 q. Whilst you was in business in California, you was unfortunate, was you not?

A. Well, yes, sir; I was burned out twice. I was burned out in a

place called Forest City. I had my house and my stock of goods; I didn't owe a man a dollar, and I was burned out, and the fire swept away every house in town; didn't leave nothing there. Then I was burned out there. Then I was burned out afterwards in Idaho.

172 q. Was you in debt then?

A. I don't know whether I was in debt then or not. At any rate we paid everybody dollar for dollar.

173 q. Did you ever fail in business?

A. I will tell you, sir, I was burned out in Forest City in the spring of 1858. I had bought a house for $1,200, had paid for it; I had done some repairing to it, amounting to about $500 more. It stood me in then, about $1,700. I was burned out. I had outstanding money owing to me about nine or ten thousand dollars;
466 and I had to go to work and rebuild, and I put up a house that cost me $4,200, and the very man that I bought my lumber from, and that owed me $500, and while the fire was burning, he went and sold out his mill to another man; and I sent my order to the mill, and thought that he would not want me to pay any money for so much. And then a day or two afterwards he sent down these other men, to whom he had sold out just as a cover, for the bill that I had made with him. He sent down to me for the bill.

174 q. Well, I don't care about this, sir.

A. Well, sir, but I want to tell about it; I want to tell the circumstances how I came to fail, so that you will know all about it. I did fail, and I want to tell you the facts, because, when a man fails, there ought to be some reasons why; and if a man fails without any reason, that is dishonest; and I want to tell you the reasons why I failed; I want to tell you about my reasons of my failing.

175 q. Well, sir, that is all right; honest men fail. There is no discredit about failing; I don't care about that.

A. Well, sir, after being burned out there, the Frazer river
467 fever broke out, and everybody went right off to it; and they owed me money, and right after that the Washoe came along, and everybody rushed out and took their blankets, and went off to that. Before that I could have gone and got my pay from them every Saturday, and then they were off, and I owed some $13,000 in San Francisco, and I could not pay it, but I did pay them; some I paid 75 cents on the dollar, and some 50 cents, and some 35 cents, and I paid them all. And then every one of them sold me goods afterwards since that—thousands of dollars' worth. You see, sir, that failing looks like a very bad thing, unless a man can give some good description of it.

468 *Direct examination resumed.*

By Mr. Goodwin:

176 q. What understanding was there between Mr. Levinson and you as to your paying or not paying for those goods, until you had them in your possession, until they had been delivered?

A. Well, there was no particular understanding about it. The understanding was that when the goods were delivered, I was to pay for them. That was the necessary consequence. There was nothing said on the subject, that I know of.

177 q. Was there anything said particularly, that you would not pay for them until you had had them removed?

A. Never by me, and nobody else had any right to say so, because I was the man who was to pay for them.

178 q. Then you say it was your understanding of the arrangement, that as soon as you had the goods delivered, you was to pay for them, and not until then?

A. Yes, sir; that was the calculation and the understanding.

179 q. After the sale, did you meet Mr. Levinson at a saloon or restaurant kept by one named Ibach?

469 A. I was in there taking my lunch and Mr. Levinson came in there; that was the next day, sir, not the same day. I was in there taking my lunch, and Mr. Levinson came in there with a special or secret policeman, or detective man, or officer, or something of the kind. It was a man by the name of Charley Lancing, and Mr. Levinson was in the custody of Lansing, and both of them came in together, and I asked them to take a glass of beer with me, and they did so.

180 q. Did you, on that occasion, have any conversation with Mr. Levinson, and if so, state what it was, in regard to the receipt of fifty-five per cent. on the bill of goods?

A. After I was through with my lunch, Mr. Levinson requested me to go to Mr. Asay; I did not know him at that time. He asked me to go to him, and says he, "You tell him that I sent you there, and I want to know from him whether I shall alter the bill of sale, and make it 55 per cent. on a dollar, or leave it standing just as it is," and

470 I went according to the request of Mr. Levinson, to Mr. Asay, and introduced myself to him as Mr. Kempner, and told him that I was sent by Mr. Levinson to ask this question, and Mr. Asay was, I believe, at that time—he seemed to be—very busy, and he directed me to see Judge Wilson. Says he, "You go to Judge Wilson," and he pointed him out to me, and I looked, and there was an elderly man down there sitting on a big cushioned chair, and I asked him this question, and he says—he waited and studied, and and then he says, "Yes, sir; tell him to alter it by all means."

181 q. In that conversation with Levinson, did you introduce the subject, by telling him that you might want to have that bill of sale changed to deduct the 45 per cent., and have it represent the amount actually paid, or anything to that effect?

A. No, sir; I did not. I never did. I never dreamed of it at all; it was something that he asked me to do, a favor for Mr. Levinson, and I went and asked the question of Mr. Asay.

182 q. In that conversation, did you tell Mr. Levinson,

471 "They can't do anything to you, you will get out all right. I am going into business, and after about three years I will give them a 'hist' bigger than any such thing as you have?"

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471 "They can't do anything to you, you will get out all right. I am going into business, and after about three years I will give them a 'hist' bigger than any such thing as you have?"

A. No, sir; I never said anything of the kind.

183 q. Did you, subsequently to that, have a talk with Mr. Burke, and say to him, "Mr. Friendlander is going away this evening, and if the creditors replevy the goods, that you would make them pay dollar for dollar for them, and that it was lucky that Levinson sold out when he did, for if he had waited until Monday afternoon, he would have been attached?"

A. No, sir; I never have had any such conversation with Mr. Burke in my life, never.

184 q. Did you have any conversation to that substance or effect with Burke or Levinson?

A. No, sir; I did not with him, or with any other person.

185 q. Either when they were both present, or to either of them seperately?

A. No, sir; to no one of them seperately, or in company, at any time after the sale, did I have any such conversation with any of them.

472 186 q. Didn't you have it on Clark st., or any other place?

A. No, sir; neither on Clark street, and no other place, I never did.

187 q. At the time when you made this purchase of Mr. Levinson, had you any information that any of his creditors had sued him, or wanted to sue him, or were pressing him in any way?

A. No, sir; I had no such idea. I was under the impression that Mr. Levinson was doing business on his own cash capital, and I didn't dream that he owed anything. On the contrary, Mr. Levinson himself informed me that when he married his wife she had twenty thousand dollars in money, and that was the reason, he told me, that he married her; and I supposed that he was doing business on that capital, and in fact, that was what I supposed all the time.

At this point the examination was adjourned until 2 o'clock of the same day.

473 I. 1.

*Cross-examination resumed.*

By Judge Moore:

188 q. In whose employ was Mr. Levinson in San Francisco?

A. I don't know whether he was in anybody's employ.

189 q. You spoke of his being there in a clothing store?

A. Yes, sir. I don't know whether he was a partner, or whether he was a clerk there.

190 q. What house was it?

A. The house of M. Kohm and Company.

191 q. You spoke of Friedlander and somebody else having a house there?

A. Yes, sir; there was a firm of Friedlander and Stick there.

192 q. Was not Levinson in their employ?

A. Not that I know of. I have not seen him from the year 1857 until 1863. I don't know anything about him.

193 q. At the time you was in San Francisco, I mean at that time, did you know anything about his being in Friedlander and Company?

A. No, sir; I never; never saw him in there in my life.

474 194 q. You met Friendlander here, you say?

A. Yes, sir; I saw him here.

195 q. When was that?

A. It was after I had bought Levinson out.

196 q. How long after?

A. It might have been three or four days after I bought him out, but I was in Mr. Friedlander's establishment in New York. I wanted to see him, considering Friedlander and Stick friends of mine.

197 q. When was that?

A. That was in last December, the latter part of December, or the commencement of January, when I was on my way here; and in fact, one of the partners said that he would come to Chicago with me, but he had some business that he had to attend to, and he could not get away, and of course I went on myself.

198 q. Did you see Coleman while you was in New York that time?

A. No, sir. I didn't.

199 q. Will you just repeat the conversation you had with Friedlander, here in Chicago?

A. I had no particular conversation with him, only, I was going along and he met me right here, before this hotel, the Tremont

475 House, I think it is, and I saw him, and I spoke to him, and he says to me, "You will get rich out of me, on my goods." I knew what he had reference to, and I said, "I will pledge you my word, Mr. Friendlander, that I never knew that he owed you a dollar. If I had, I would have telegraphed to you at New York about his selling out, and you should have known it." That was all the conversation that I had with Mr. Friedlander while he was here.

200 q. Were you present when an interview took place between Levinson and Friedlander?

A. No; I was not, sir.

201 q. You didn't hear anything of that?

A. No, sir; I didn't.

202 q. Was you present when any interview took place between Friedlander, Levinson and Lansing?

A. No, sir; I was not present.

203 q. Did you have any other conversation with Levinson, whilst he was in custody, except the one whilst he was in Ibach's whilst you were taking lunch, to which you have referred?

A. Not to my knowledge.

204 q. What day was that?

476 A. I could not tell you, sir, what day it was. It may have been the first or the second day after his arrest. I don't know anything about what day that was; I cannot tell you.

205 q. Was Lansing present during that conversation you had with Levinson?

A. No sir; he was on one corner of the room talking with somebody else, and I was sitting at my table, eating my lunch, and there came in these persons, and Mr. Levinson came up and introduced me to Mr. Lansing in the first place as Mr. Kempner, and I asked them to take a glass of beer, which they did; and then, Mr. Levinson asked me to go and ask a question of Mr. Asay—the same question which I have stated before—"Whether it would not be advisable to alter the bill of sale so as to have it receipted at 55 per cent., or to leave it standing as it was.

206 q. You went to see Mr. Asay?

A. Yes, sir; I did.

207 q. And he simply told you to go and see Judge Wilson?

A. Yes, sir; he was busy.

208 q. Where was Judge Wilson then?

A. He was sitting in the little front office that was parti-
477 tioned off from Mr. Asay's office, and a kind of a glass wall office that is in there, and I went in there, and Mr. Asay directed me to go to Mr. Wilson with that question, and Mr. Wilson he studied over it, and ——

209 q. What did you say to Judge Wilson?

A. I asked him the question that Mr. Levinson told me to ask.

210 q. Just please state what that question was, or what you stated to him.

A. I told him that "Mr. Levinson sent me to make the inquiry, and ask the question, and that I asked Mr. Asay, and that he was busy, and that he told me to go to you;" and those were my words as near as I can recollect.

211 q. What words?

A. Simply that I came over to ask the question for Mr. Levinson, and Mr. Asay directed me to ask him this question.

212 q. What was the question?

A. The question was whether he should he leave the bill in the situation as it was, or whether he should he change it to 55 cents on the dollar, as the money was. That was the question; I asked judge Wilson that question, and he said to me, "Let him alter it, by all means."

478 213 q. Was that whilst Levinson was yet a prisoner?

A. Yes, sir; he was then in the custody of the officer, Mr. Lansing.

214 q. Do you remember who was in the office at the time?—the office, I mean, of Wilson and Asay.

A. There was somebody there, I believe; there was a female; I could not tell you exactly who was there, but it seems to me I remember there was a female there.

215 q. In which room was she?

A. I don't remember; I should think, there is two or three rooms there, I don't recollect; but the female was sitting there in one of the rooms, I don't recollect which.

216 q. You go into that office right in the middle room, do you not? there are three rooms, counting this room that you call a glass office.

A. It was in the back part that the lady was.

217 q. Where was the judge?

A. The judge was in the front room.

218 q. Where was Mr. Asay?

A. Mr. Asay was in the middle room, with somebody talking with him.

219 q. Mr. Asay was there at the time?

479 A. Yes, sir; he was, and he directed me to Judge Wilson.

220 q. Was that the only conversation you ever had with Mr. Wilson, and Asay with regard to this case?

A. That was the only conversation I ever had with Judge Wilson. Mr. Asay sent for me once, and he said that they were about to commence a suit against me, and he wanted me to employ him; and I told him if they did that I wanted to employ him; and I told him that he should consider himself engaged and retained for me. I did not pay him any money, but he said it was all right. When they did commence an action against me, I went to Mr. Asay after I was served with a copy of the restitution of the goods. I went to Mr. Asay first after night, at nine o'clock, at his house, and I told him the circumstances; and he says, "You cannot expect me as your counsel, because that would conflict with the client I am already for," referring to Mr. Levinson, and he referred me to, he wanted me to employ a Mr. Jurgess or Burgess, or some name of that kind, I don't recollect what, but I have seen the man in court, a man with

480 lightish whiskers, a youngish man; he recommended me to Mr. Burgess, but I didn't do it. I found my way here through the recommendation of a cousin to Mr. Goodwin.

221 q. Is that the only interview you ever had with either of them about it?

A. That is all to my knowledge.

222 q. You have stated the only interview you ever had with any of those creditors?

A. Yes, sir; that is the only one, except the one with Mr. Barry, if you call him a creditor. O, there was another gentleman here from New York that I had some words with; I don't recollect what house he was from, but he was here; I didn't have more than one or two words that passed between him and me, and I don't know the substance of them; I don't know even the man's name, and I don't know the house he was for. Here I wish to say that upon recollection, in answer to a previous question, I may not have stated all I now recollect as to whether I had any other conversation with Mr. Asay. I recollect that I did have another conversation with him. I recollect that one time when I was going to the post

481 office, I met him on the street, and he was going home. On Adams st. we met Mr. Lansing and Mr. Levinson, riding in a carriage, and as we came to where Mr. Levinson used to live, they were moving his furniture at that time, and Mr. Asay requested me to come to his office, that he had something of importance to tell me. I went there the next day, and his first question that he asked me, "Are you a Mason?" I says to him "I am," and then he says, "If

that is so, I want to talk to you on the square, now." Then I says, "Well, all right; talk away right, now." He says, "Do you want to get any more stock of that same kind?" and I says, "I would like to if I can, but I have spent a good deal of money, and my means are very limited." I had spent a good deal, and hadn't very much cash then. He says, "If I had known of you a week ago, you are the man I want to see—if I had known—why, I have known of fifty thousand dollars' worth of stock bought in New York, and sold here without being unboxed or opened at all, but," says he, "I have not much time to talk to you about it now. Come here again, and I will talk over the matter with you." That was the last conversation I had with Mr. Asay.

482 223 q. Do you recollect now quite positively whether that was the last conversation with Mr. Asay and Mr. Wilson?

A. That was the last conversation I had with Mr. Wilson, and I told you before I am not quite positive whether I have spoken to Mr. Asay more in that conversation or not, but that is the last conversation that I recollect of having with Mr. Wilson. I might have talked with Mr. Asay some, and I think I have been there to his house. I have never talked with judge Wilson only that one time; the time that I met Mr. Asay on the street after the sale was several days after.

224 q. Was it whilst Mr. Levinson was in custody?

A. Yes, sir; Mr. Asay even stopped here to the book store to buy something, I remember that, and he went to the post office, I believe. I think I remember that he went along, and stopped, if I remember, and he asked me, "Where do you live?" and I said "On the corner of 12th street and Michigan Avenue." "Why," he says, "that is just on my way; we can walk there together;" and now I recollect I do not know how it is, but the the more you have to recollect, the more

483 you remember. I recollect that the same evening, going home with Mr. Asay, Mr. Asay requested me to call down to him that night, and I told him, "What for?" and he says, "Come down here, and we will go down town, and have drinks with Mr. Lansing;" and he says, "We will see if I can get Mr. Levinson a chance to sneak off, to get away, to slip off;" that is the sole sum and substance of it; that his the truth of it; so help me God.

225 q. Some of these goods you say were five or six years old.

A. I think some of them were as old as that, if not older, and if any man who is accustomed to handle goods and is a judge of goods should take them, I would be willing to leave them to him, and he would say the same.

226 q. What proportion of them are old goods?

A. I could not tell you. There was certainly some; there may be $2,000, there may be $2,500, there may be $3,000, and there may be only $500 worth, I could not tell you what the amount is; I am not prepared to tell positively; but there is a great many of them that are old goods.

227 q. Who did Levinson originally buy that store from?

A. I was told he bought out a man by the name of Rosen-
484 thal and somebody—Rosenthal and Spring—I think Spring was the name, but although I was told that, I do not know anything about it. I do not know anything about this affair at all. I was told that Spring had no name; that his business was entirely done under Rosenthal's name.

228 q. When did you get that information?

A. I heard that some time ago; I did not pay any attention to it; it did not strike my mind. I did not pay any attention, because it would have made no difference to me; I had bought the goods.

229 q. What do you mean by saying that he had no name?

A. When the expression is used that a man has no name, I suppose it means that he has failed, and that he could not do business in his own name, and that he was doing business under the name of somebody else; that I suppose to be the use of the word.

230 q. What kind of goods were they that formed the old part of the stock?

A. Well, there were some vests, and some pants, and some coats, and, I think, some neckties. I remember there were some of
485 those that looked as though the had been mouldy.

231 q. Were any of them out of style or out of season?

A. Well, as to out of season, you could find, now, goods in any store that will be out of style and season, but a man who keeps a stock can find himself able to sell a class of goods if he is a business man; but then a man who takes money and buys goods would not buy anything but fresh goods and goods then in style; of course a man taking money and buying would not buy old rubbish.

232 q. You are now living at Cedar Falls?

A. Yes sir.

233 q. In the clothing business there?

A. Yes, sir.

234 q. On your own account?

A. Yes, sir.

235 q. Is the entire stock of goods you have there your own?

A. No, sir; not all, I owe perhaps $7,000 yet on them; somewheres in that neighborhood.

236 q. Of whom did you buy the goods?

A. I bought them of several parties here in Chicago; I
486 bought of Leopold and Kuh and others.

237 q. I don't care about that; but you bought this stock on credit, did you?

A. Certainly, some I bought on credit; certainly, of course. I bought some yesterday on credit. When I spoke to you in conversation a little while ago about having goods that belonged to other parties, I meant this, that they were goods that I owed for. When I have property belonging to other people, by that I mean that it is property that I have got credit for. When I said that I had property belonging to other people in my care, I meant that the property that I had belonged to them because I have not yet paid for them and I shall have to pay for them, and they are in my care.

238 q. Did you pay for any of these goods at 55 cents on the prime cost of the goods?

A. No, sir.

239 q. You paid one hundred cents on the dollar, didn't you?

A. Of course, sir; I bought them and I paid for them at the price they asked me.

240 q. You bought them at that price, did you not—at one hundred cents on the dollar?

487 A. I bought them at that price, of course.

241 q. You have come here this time to give your deposition, have you not?

A. Yes, sir.

242 q. And you desire now to go home to-night, do you not?

A. Yes, sir; I will if I can get through.

243 q. And you are very unwilling to remain here until to-morrow?

A. I would rather go home to-night. I don't say that I am very unwilling, but I think it would be a great favor if you would let me off to-night, because I have got property that don't belong to me, and I have got to dispose of them and pay the parties for them; and I have left a stranger there, a young clerk in charge of my stock, and I want to go home, if I possibly can get off to-night.

ISAAC KEMPNER.

Subscribed and sworn to before me this 31st day of October, A. D. 1866.

JAMES S. ELY,
[SEAL.] *U. S. Com'r.*

And the further examination of witnesses in behalf of said defendant, Kempner, was adjourned to 10 o'clock a. m., at the same place.

488 And on the thirteenth day of November, 1866, at the office of Goodwin & Larned, in the city of Chicago, in said district, at ten o'clock a. m., there appeared before me the counsel for the said parties; and the said Isaac Kempner, who having been recalled on the part of the said defendant, Isaac Kempner, was examined in chief by Mr. Goodwin and testified as follows:

244 q. Did you, at the time Mr. Asay sent you to Judge Wilson when you called upon him, in that interview or at any other interview, before or after, state to Mr. Asay that you had advised Levinson to break with his pockets full?

A. No, sir; I never did.

245 q. Did you in any conversation with Levinson advise Levinson to break with his pockets full?

A. No, sir; I never did.

246 q. Did you ever, in any conversation either with Asay or Levinson, use language to that purport or effect, either in reference to Levinson's conduct as to his creditors in Chicago, or in reference to any other thing?

A. No, sir; I have had no such conversation at all.

489 *Cross-examination.*

By Judge Moore:

248 q. Who did Asay send to you to get you to employ him in this case?

A. Levinson.

249 q. He sent Levinson?

A. Yes, sir. He did not send him to me with the express wish to get me to employ him, but with the idea that he should see me, and my headquarters being in Witkowsky's, I was out when Levinson called there, and when I went there I was informed that Levinson had been there and had said that Mr. Asay wished to see me.

250 q. Was it now that [that] you state in your former deposition that Mr. Asay wanted you to employ him? Was that the only foundation for it?

A. That is the only foundation for it. I went there and he told me they were about to commence proceedings against me, and I said if they did I should want him to consider himself retained for my defense.

251 q. Did you pay him anything?

A. No, sir; I did not, but I told the gentleman to consider
490 himself retained, and he said that was all right.

252 q. You never paid him anything?

A. No, sir; I never have.

253 q. And then when you went to his house he told you he could not appear for you?

A. Yes, sir; I went to his house and he told me he could not appear—let me get the exact language so as to be correct; he says, "I cannot take your case because it will come in contact (or conflict rather) with Levinson's case."

254 q. Who was present at that time?

A. David Witkowsky was present, because I did not know where the house was, and David did know.

255 q. Who was was present at the time you had the other conversation in the house with him, when you told him to consider himself retained?

A. Nobody that I remember.

256 q. It was at his office?

A. Yes, sir.

257 q. You don't remember of any one's being there at all?

A. No, sir; I do not think there was any one else there at all;
491 there might have been. If I remember right now, I think there was a gentleman who was lame, a small gentleman; I saw him moving about the office and I saw that he was lame.

258 q. Did you ever see him about there at any other time; that lame man?

A. Not that I know of; I do not think I have been there after that time to the office; I don't remember.

259 q. Do you know where Levinson is now?

A. No, sir, I do not.

260 q. Was the time that you last spoke of the same time that Mr. Asay advised you to employ some other attorney?

A. I do not know what time you have reference to.

261 q. The last time was when you went to his office and talked with him as you have spoken of ——

A. No, sir, it was not; it was when I was to his house that he advised me to employ Mr. Burgess or some such name, that he told me he could not take my case now because it would conflict with the other case; that was the time.

ISAAC KEMPNER.

Subscribed and sworn to before me this 13 day of November, A. D. 1866.

[SEAL.] JAMES S. ELY,
*U. S. Com'r Nor. Dist. Ill.*

492 And afterwards, to wit, the sixth day of November, A. D. 1866, was filed in the office of the clerk of said court, a stipulation in the words and figures following, to wit:

U. S. Cir. C't Nor. Dist. Ill's.

*Stipulation by defendant's counsel as to answer of Isaac Kempner to int. No.* 180. *Rec'd.*

CHARLES B. CHURCHILL *et al.* *vs.* ISAAC KEMPNER, imple'd, &c. } In chancery.

It is agreed by the counsel for Isaac Kempner, that all that part of the answer of said Kempner to interrogatory No. 180, (defendant's re-direct,) in the words following, to wit, "And I went according to the request of Mr. Levinson to Mr. Asay and introduced myself to him as Mr. Kempner, and told him that I was sent by Mr. Levinson to ask this question; and Mr. Asay was at this time—he seemed to be—very busy, and he directed me to Judge Wilson. Says he. 'Go to Judge Wilson,' and he pointed him out to me, and I looked and there was an eldrely man down there sitting in a big cushioned chair, and I asked him this question, and he says—he waited and studied, and then he says, 'Yes, sir, tell him to alter it by
493 all means;" may (the counsel for the complainant consenting thereto) be suppressed and expunged from said testimony as not responsive to the question and not evidence in the cause.

We also consent (if the counsel for the complainants desire it) that all the testimony of said Kempner, given on his cross-examination by Judge Moore, in reference to conversations and interviews between him and Mr. Asay and Judge Wilson, embraced in questions and answers from No. 206 to 224 inclusive, may be suppressed and expunged, in like manner from the testimony as immaterial and irrelevant in this case.

We make this proposition for the reason that the conversations referred to in the several answers, being conversations of the attor-

neys connected with the case, in their own offices or elsewhere, we had and have no desire to go into any evidence of the kind, whether it may be supposed to operate for or against us.

December 5, 1866.

GOODWIN & LARNED,
*Sols. for Def't, Kempner.*

To JUDGE MOORE, *of Counsel for Comp'ts.*

Copy handed to Judge Moore Nov. 5, 1866.

S. A. GOODWIN.

Endorsed: Nov. 6, 1866. Wm. H. Bradley, cl'k.

494 The following is the exhibit, marked "Schedule No. 1," attached to the affidavit of Isaac Kempner in this cause, filed May 5, 1866, and called for in the foregoing deposition, direct interrogatory No. 61.

*Schedule No.* 1, *referred to in Kempner's deposition.*

STATE OF MISSOURI, *Cook County, ss:*

People of the State of Illinois to all sheriffs, coroners, and constables within said State, greeting:

Whereas complaint under oath has been made before me by Isadore Rosenthal that John S. Livingston, at said county, has been guilty of obtaining goods by false pretences, you are therefore hereby commanded forthwith to arrest the said John S. Livingston and bring him before me, (or in my absence,) before some other justice of the peace in said county, to answer to the people of the State of Illinois on said charge, and abide such further order as may be made concerning said charge, and hereof make due service and return as the law directs.

Given under my hand and seal at my office in Chicago, this 9 day of April, A. D. 1866.

[SEAL.] C. D. WOLF,
*Justice of the Peace.*

495 Executed by arresting the within-named defendant and bringing him before Justice T. B. Brown, this 10th day of April, A. D. 1866.

CHARLES LANSING,
*Police Officer.*

I hereby withdraw the prosecution of the within defendant on the within charge, the same having been made under a misapprehension of the facts.

LOUIS FRIEDLANDER.

Df't disch'd.

496 *Certificate of commissioner to depositions of David Witkowsky, senior, David Adams, David Witkowsky, jr., Solomon Witkowsky, & Isaac Kempner.*

And I do further certify that the proceeding depositions taken on application of Isaac Kempner, def't, impleaded in a suit in chancery, now pending in the Circuit Court of the United States for the circuit and northern district of Illinois, wherein Charles B. Churchill et al. are complainants and Isaac Kempner, impleaded, is defendant, were reduced to writing by me, and signed separately by the said David Witkowsky, sr., David Adams, David Witkowsky, jr., Solomon Witkowsky, and Isaac Kempner, in my presence, the said witnesses having each of them, before the giving of the said depositions by them respectively, been duly cautioned, examined and sworn by me to testify to the truth, the whole truth and nothing but the truth and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and seal this 13th day of November, A. D. 1866, at Chicago, in said district.

[SEAL.]

JAMES S. ELY,
*U. S. Com'r Nor. Dist. Ill.*

Endorsed: Filed Jan'y 4, 1867. Wm. H. Bradley, cl'k.

497 *Defendants' testimony continued.—Deposition of J. F. Friend.*

Be it remembered, that on application of John D. Levinson and Isaac Kempner, the defendants in a suit now pending in the Circuit Court of the United States for the northern district of Illinois, wherein Charles B. Churchill, Leonard K. Smith, John Friedlander, Julius Stitch and Leopold Latham, are complainants, and John D. Levinson and Isaac Kempner are defendants; I, S. W. Burnham, U. S. commissioner in and for the northern district of Illinois, have this second day of March, A. D. 1867, at the office of Goodwin and Larned, in the city of Chicago and district aforesaid, due notice to the said complainant having been given, proceeded to examine J. F. Friend, as witness on behalf of the said defendant in the aforesaid suit; and I certify that the reason for taking said deposition is, and the fact is, that the same was taken by consent of the parties to the said suit and their counsel respectively. And I do further certify that the said Messrs. Goodwin and Larned appeared before me on the said day on behalf of the said defendants, and Messrs. Moore and Caulfield as counsel on behalf of the said complainants, and that the said J. F. Friend being by me carefully examined, cautioned and duly sworn to testify the whole truth, says:

498 1 q. What is your name, residence, and occupation?

A. My name is J. F. Friend; residence 54 Fourth avenue; occupation, clerk at 77 Lake st.

2 q. Do you know Isaac Kempner and John D. Levinson, the parties in this suit?

A. I know Mr. Kempner; don't know the other party.

3 q. When did you first know Kempner?

A. I knew him first the day he brought some goods down into the basement of 77 Lake st.

4 q. That was last April, was it?

A. Yes, sir.

5 q. What time in April was it?

A. That was about—well, it must have been somewhere the 8th, 9th, or 10th; somewhere near those dates.

6 q. What day of the week was it?

A. It was Monday morning; it was the 9th, I guess.

7 q. That is the time you first saw Kempner?

A. Yes, sir.

8 q. Where did you live at the time; where was you doing business?

9 a. I lived on Adams street at that time; I guess 197, and my brother-in-law was commencing a store then at 77 Lake st.

10 q. On the first floor?

A. Yes, sir.

11 q. Who is your brother-in-law?

499 A. Isaac Schrimski.

12 q. What was the business?

A. Clothing business.

13 q. How long had your brother-in-law been in that store?

14 a. He had not been in the store any time; he was just taking possession. He took possession of the store on the 1st, but there was some fixing to be done in shelves and painting.

15 q. How many days before?

A. About two days before that he took fair possession of the store.

16 q. What was your business there?

A. Clerking.

17 q. Was there any counter in the store on either side; the right hand or left?

A. Yes, sir; on the right hand side as you go in the store there were two counters and a half; or two large size counters and one small counter.

18 q. By two and a half do you mean right back of each other; in a line with each other?

A. They were in a line.

19 q. Any counter on the other side; the left hand?

A. No, sir.

20 q. There was no two counters on each side of the store?

A No, sir.

500 21 q. How deep is the store?

A. The store is, I guess, eighty or ninety feet.

22 q. Was you there on the day when Isaac brought the goods?

A. I was.

23 q. Was you there the next day?

A. I was.

24 q. Was you there the third day?

A. I was there the whole week.

25 q. Tell me at what time in the morning on the second day after

Isaac brought his goods down to the basement did you you go to the store in the morning?

A. I went there a little after six; I opened the store at six o'clock in the morning.

26 q. Had Isaac Kempner any business whatever in your store?

A. He had no business whatever in the store, sir.

27 q. His goods were in the basement below?

A. Yes, sir; in the back part of the basement.

28 q. Now; on the second day after Isaac stored his goods in the basement, from the time you came there in the morning, how continuously was you in the store?

A. I was there until half-past eleven or twelve o'clock; that was my time for dinner.

29 q. What part of the store in reference to the door were you in?

501 A. In the store?

30 q. Yes.

A. I was mostly in the front part of the store.

31 q. How near the door?

A. About twenty feet; twenty or twenty-five feet or so; I cannot say exactly; I was not on one spot you know.

32 q. About within twenty feet?

A. Yes, sir.

33 q. During that time from six o'clock in the morning until you left, at half-past eleven, did Lansing come in there with Kempner and another man?

A. No, sir; I have not seen no Mr. Kempner or Lansing, or any other man.

34 q. You say you didn't know Levinson?

A. I did not.

35 q. But neither Kempner or Lansing were in the store together that morning?

A. No, sir.

36 q. If those three persons had been in the store in a group four or five feet in the inside of the door, about ten o'clock in the morning, or any time during that forenoon, were you situated so you would know it?

A. So I could see them?

37 q. Yes, sir.

A. Yes, sir.

502 Q. Why, I could have seen them anywhere; I must have noticed them if they had been anywhere in the store.

38 q. If parties had been there holding any conversation, were you where you could hear it?

A. There is no place where I could not hear them in the store.

39 q. Now, take the next day, the third day; that would be Wednesday?

A. Yes, sir.

40 q. State what time you went to the store in the morning; how long and how continuously you staid there.

A. Just as it happened that week. I opened the whole week early in the morning, a little after six o'clock. I left home generally at six o'clock, and came to the store about a quarter after six.

41 q. The whole of that week?

A. The whole of that week.

42 q. State if there is anything that makes you recollect being in the store more particularly that week than at any other time.

A. Because my brother-in-law was just parting his goods with his former partner, corner of Franklin and Lake sts.

43 q. He was just establishing himself there?

A. Yes, sir.

503 44 q. Putting up the goods?

A. Putting up the goods.

45 q. During the whole of that week, you say you were there every forenoon?

A. Yes, sir.

46 q. Down to and including Friday?

A. Including Friday and Saturday?

47 q. I wish to inquire whether during that week Lansing and Kempner, with Mr. Levinson, or any other person, was in the inside of that store holding any conversation?

A. No, sir, I have not seen anybody in there of those three, or two, holding any conversation.

48 q. You heard then no conversation in there about Kempner's sale with Levinson, or anything about it?

A. No, sir; I have not.

49 q. Do you recollect seeing Mr. Lansing afterwards at any time during that week, after the second morning, come in there and inquire for Mr. Kempner?

(Objected to.)

A. I cannot swear whether Mr. Lansing came in that week. I cannot swear to no certain date. Lansing came in one day and inquired about Mr. Kempner; I told him Mr. Kempner was not in, and he went down stairs; I told him he might go down stairs in

504 the basement where Mr. Kempner generally was when he was in the building, and he went down in the basement and found the door closed.

50 q. Did he tell you what he wanted of Mr. Kempner?

A. He says he has got something to tell him; something particular to tell him.

51 q. You think that was after the first week?

A. I could not recollect; it might have been that same week; I could not swear.

*Cross-examination.*

By Mr. Moore:

52 q. How was the basement room arranged?

A. The front part was a saloon at that time; they were fixing it up for a saloon, and it was partitioned off, and the bar part was where Mr. Kempner had his goods, and he had to go through our place; through my brother-in-law's store, to get into the basement.

53 q. Any counters down there?

A. No counters down there.

54 q. No counters down there at all?

A. No, sir; hardly room enough to stay in there, because Kempner had so many boxes there.

55 q. You was there when your brother-in-law first took possession of the place, was you?

505 A. Yes, sir.

56 q. That was the first week in April?

A. He took it the first week in April; he didn't take fair possession of it, because he bought out Witkowsky, who had a hat and cap store there, and he could not take possession of the store until he took the stock of hats and caps; until those were invoiced to him. That took about six, seven, or eight days.

57 q. The first of the next week you was there all the time?

A. I was there all the time, because my brother-in-law sent up the goods from the other place, and I received them.

58 q. You was busy receiving those goods?

A. I was not very busy in receiving them, because they came up very slow; one or two, say three loads a day.

59 q. Any person there assisting you?

A. Nobody assisting me; I was putting them up myself.

60 q. Putting them up yourself?

A. Yes, sir; on the shelves.

61 q. On Monday, Tuesday, and Wednesday had you completed putting them up?

A. No, sir.

62 q. Were still engaged in putting them up at that time?

506 A. Yes, sir.

63 q. Do you know Mr. Lansing well?

A. I do, sir.

64 q. How long have you been acquainted with Lansing?

A. I have not been acquainted with him at all, only I know him from January, about the 7th or 8th. My brothers kept a dry goods store on Wells st., and they were burned out just about that date. I guess it was the 7th. I know there were some goods stolen from them, and Mr. Lansing, I guess, got the thieves, or something like that. He told my brothers they should come up to the Recorder's Court as witnesses against the man where they found the shawls or some of the dry goods, and they pointed out to me as the sheriff or some of the city police Mr. Lansing.

65 q. That is all the acquaintance you had with him?

A. That is all the acquaintance I had with him.

66 q. Who did you say your brother-in-law is that keeps that store?

A. Isaac Schrimski.

67 q. Where is Mr. Witowski's establishment?

A. He is up stairs now.

68 q. Over your store?

A. Yes, sir.

69 q. You are still in the store; the same store?

507 A. Yes, sir.

70 q. How long have you known Mr. Kempner?

A. I have known Kempner from the day he moved his goods into the basement.

71 q. Is the first time you ever saw him?

A. Yes, sir.

72 q. How long have you known Witowski?

A. I have known Witowski about two or three weeks before that; just when my brother-in-law rented the place of him.

73 q. Have you known Kempner pretty intimately since then?

A. He came frequently through the store into the basement. That is all the acquaintance I ever got with Kempner.

J. F. FRIEND.

Subscribed and sworn to before me this 5th day of March, A. D. 1867.

[SEAL.] S. W. BURNHAM,
*U. S. Com'r Nor. Dist. Ill.*

508 *Certificate of commissioner.*

And I do further certify that the preceding deposition, taken on application of the defendants, in a suit now pending in the Circuit Court of the United States for the northern district of Illinois, wherein Charles B. Churchill, Leonard H. Smith, John Friedlander, Julius Stitch, and Leopold Latham are complainants, and John D. Levinson and Isaac Kempner are defendants, was reduced to writing by me, and signed by the said J. F. Friend in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and seal this 5th day of March, A. D. 1867.

[SEAL.] S. W. BURNHAM,
*U. S. Com'r Nor. Dist. Ill.*

Endorsed: Filed March 13, 1867. Wm. H. Bradley, cl'k.

509 A stipulation having been filed between the solicitors for the parties in said cause referring to certain affidavits to be given in evidence therein, the stipulation, with the affidavits referred to, are in the words and figures following, to wit:

Circuit Court U. S. N. D. Ill., 7th circuit in chancery.

*Stipulation as to affidavits given in evidence.*

CHARLES B. CHURCHILL *et al.*
*vs.*
ISAAC KEMPSON, impl'd with John D. Levinson.

It is hereby stipulated and agreed between the solicitors for the complainant in this cause, and the solicitors for the defendant, Isaac Kempner, that the affidavits of the persons hereinafter mentioned,

and referred to by name as now on file in this cause, and used both by the complainants and said defendant, Kempner, on the motion to dissolve the injunction in this cause, may be taken and used as evidence upon the traverse in said cause with the like force and effect as if taken as evidence before a commissioner on notice, subject, however, to all just exceptions in every case, by the opposing party as to the relevancy or force of the evidence thus put in.

510 The affidavits covered and intended by the stipulation are as annexed list, on the part of the complainant, and defendant, Kempner.

GOODWIN & LARNED.
MOORE & CAULFIELD.

The affidavits we want admitted for def't, Kempner, are:

*List of def't's affidavits.*

Henry Adler, Martin J. Liberman, Adolph Asher, Henry Greenbaum, Henry Leopold, Simon Schlosman, John B. Lamken, Isaac Hinnock, Henry A. Kohn, Abram Kuh, Chauncey T. Bowen, William M. Woodhull, Frederick Crambough, James Marks, Conrad Witkowsky.

511 The affi'ts of comp't we propose to admit in turn:

*List of complain't's affidavits.*

Henry C. Berry, Wetmore G. Thompson, William A. Northup, Philip Wadsworth, Jacob Eberhardt, Benjamin F. Webster, Alexander Young, Clark A. Morse, Morris Selz, Charles Beardslee, Isaac Fambacker, Lepol Steindhardt, Edward Coleman, Harris Aronson, Adolph S. Saroni, Sinai Nathan, George White, Ralph Penoxtti, Charles B. Churchill, Maurice Cooney.

512 United States Circuit Court, northern district of Illinois.

*Affidavits on behalf defendant.*

ISAAC KEMPNER, impl'd, &c., with John D. Levinson, *ads.*
CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner. } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

STATE OF ILLINOIS, *Alexander County, City of Cairo, ss:*

Personally appeared before me, H. H. Candee, a notary public in and for said city, duly commissioned and sworn, Henry Adler, who being first duly sworn, according to law, deposes and says that between the 24th and 28th of March, 1866, he entered several times in

the store or place of business at Chicago, Illinois, of Mr. John D. Levinson; that Mr. Levinson on several occasions offered him his stock of clothing, &c., which he thought he could not pur-
513 chase for want of sufficient means, as the said Levinson had said that his stock amounted to about eighteen thousand dollars, ($18,000 00); that afterwards the said Levinson informed him that it would not require more than ten thousand dollars ($10,000 00) to buy the entire stock; that he then consulted Mr. Isaac Marks, and he thought there was no money in the stock at that figure. He then on the day following consulted Mr. M. Morris, and offered to buy the stock in partnership with him, but Mr. Morris thinking it no bargain, he was persuaded not to take the stock; that in two or three days after he again met Mr. Levinson, and he, the said Levinson, said he would prefer to sell him the goods in preference to Mr. Isaac Kempner, who was then negotiating for the stock; that he subsequently spoke to the said Kempner in reference to the said stock, and that he, the said Kempner, said he did not think there was much of a bargain in the stock, but that he would give me fifty-five per cent., and no more for the stock aforesaid, and further saith not.

HENRY ADLER.

Subscribed and sworn to before me this 7th day of May, A. D. 1866.

[SEAL.] H. H. CANDEE, *Notary Public.*

H. H. Candee,
Notary Public,
Cairo, Illinois.

[5-ct. int. rev. stamp, cancelled.]

514 Cir. Ct. U. S. N. D. Ill.

*Affi't Merwin J. Liberman.*

ISAAC KEMPNER, impl'd, &c., with John D. Levinson, *ads.*
CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner. } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Maurice J. Liberman, being duly sworn, says that he is well acquainted with John D. Levinson of Chicago, that from four to six months ago said Levinson came to deponent's business place in Chicago, No. 73 Lake street, and requested this deponent to find for him a purchaser for his stock of goods on South Clark street, for the reason that he then stated that he could make more money at something else; and said Levinson said if deponent could do so, he, said Levinson, would compensate this deponent handsomely; that afterwards from time to time when said Levinson met deponent, he, said Levinson, would ask deponent if he had succeeded; that about two weeks before said Levinson sold to Kempner, deponent went
515 to said Levinson, and told him of a purchaser of his stand,

but not his stock. Levinson said that would not do, as he wanted to sell the stock; that about three or four days before the sale to Kempner, this deponent, having learned that Kempner had come from California with some money, and wanted to go into some kind of business, went to Levinson, and suggested to him that Kempner would be a good man to buy that stock; and said Levinson then said to this deponent, "I am negotiating with Kempner myself; don't you say anything to Kempner about it, for he will think I have sent you, and he won't be as anxious to buy."

And this deponent further says that this deponent is travelling agent for the house of Samuel Liberman & Son, No. 73 Lake street, and is much abroad in soliciting orders and collecting in the furnishing line.

M. J. LIBERMAN.

Sworn this 28th day of April, A. D. 1866, before me.
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons, Notary Public, Chicago, Illinois.
[5-cent int. rev. stamp, cancelled.]

516 Cir. Ct. U. S. N. D. Ill.

*Aff't Adolph Asher.*

ISAAC KEMPNER, impl'd, &c., with JOHN D. Levinson, *ads.* CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner. } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Adolph Asher, now of the city of Chicago, and lately from New York, being duly sworn, says that he is the brother of said defendant Kempner's wife, that he is personally unacquainted with John D. Levinson and Mr. Berk, his clerk; but this deponent says that on Thursday or Friday of last week this deponent was at No. 77, basement, Lake street, where the goods in question in this suit are deposited, helping Isaac Kempner to repack them in boxes, after they had been examined for appraisal; that while thus engaged a man came down, whom Kempner addressed as Berg or Berk, and to which name he responded, and deponent learned that, from
517 what he said, he had been a clerk of Levinson's; that said Kempner asked Berg if he would then go to his, Kempner's, lawyer to state what he knew about the sale to him by Levinson; said Berg declined to go, and stated that he had made his statement to the lawyer on the other side, and it did not amount to anything; that he did not want to make affidavit for either party or be mixed up with it. Kempner then asked him, "What can you say against me or against the sale?" to which said Berg replied, I can say

nothing against the sale for I don't know anything about it, because you always went aside with Levinson, and talked private about your business, so I did not hear what you was about, and I can't say anything different. And this deponent further says, that he, said Berg, then further said that he was out of business, and "they" are paying my expenses, (meaning as deponent understood the parties who had sued Isaac,) and I can't go and make affidavit for you; this deponent was at that time introduced to said Berg by name by said Kempner. This deponent further says that he was not more
517 than two feet from the parties at the time of said conversation.

ADOLPH ASHER.

Sworn and subscribed this 2nd day of May, 1866, before me,
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons, Notary Public, Chicago, Illinois.

[5-cent stamp, cancelled.]

Cir. Ct. U. S. N. D. Ill.

*Aff't Henry Greenbaum.*

ISAAC KEMPNER, impl'd, &c., with JOHN D. Levison, *ads.* CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner. } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

Henry Greenbaum, of Chicago, in said district, being duly sworn, deposes and says, that on the ninth day of April, A. D. 1866, Isaac Kempner, one of the defendants in the above-entitled cause,
518 had funds in the banking office of Henry Greenbaum & Co., and was authorised to check on said firm for the sum of eight thousand dollars.

That on the same ninth day of April, 1866, said Kempner's check to Kuh & Leopold, of which the following is a copy, viz:

$7,725 95. CHICAGO, *April 9th*, 1866.

Henry Greenbaum & Co., bankers, pay to Kuh & Leopold or order seven thousand seven hundred and twenty-five 95 dollars.

ISAAC KEMPNER.

[Stamp.]

Was presented at our office for certification and was duly certified as good on the same day, and was paid by our office on the follow-

ing day, to wit, the 10th day of April, 1866; and this deponent further says that said check was endorsed as follows, to wit:

"Without recourse on us.

KUH & LEOPOLE COLE."

And further, deponent saith not.

HENRY GREENBAUM.

Subscribed and sworn to this 1st day of May, A. D. 1866, before me.

[SEAL.] D. D. GREENBAUM.

D. D. Greenbaum,
Notary Public,
Chicago, Illinois.

[5-cent stamp, cancelled.]

519 Cir. Ct. U. S. N. D. Ill.

*Aff't Henry Leopold.*

ISAAC KEMPNER, impl'd, &c., with JOHN D. Levison, *ads.*
CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner. } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Henry Leopold, of Chicago, being duly sworn, says that he is a clerk of the firm of Kuh & Leopold, No. 73 Lake street; that on Monday, the ninth day of April, 1866, John D. Levinson brought to Kuh & Leopold the check of Isaac Kempner on Henry Greenbaum & Co. for $7,725 95, and said that Greenbaum & Co. had not currency that day and wanted this check to lie over to next morning, and he, Levinson, wanted Kuh & Leopold to hold the check for safe-keeping and to collect it for him; that said check was at the time payable in blank only, to the best recollection of deponent, and for the safety of keeping over night it was filled by Kuh & Leopold as payable
520 to them or order, and presented that day to Greenbaum & Co., and by them certified as good, and on the next morning presented and paid to Kuh & Leopold for said Levinson; that on the same day, April 10, 1866, said Kuh & Leopold paid to Mr. Asay, of the firm of Wilson & Asay, counselors-at-law, five hundred dollars of the said money, by the written direction of said Levinson hereto annexed, and after deducting that sum and the further sum of $106 25 owing by said Levinson to said Kuh & Leopold and this deponent, they paid the whole balance of said sum of $7,725 95 to the said Levinson, and took his receipt for the whole sum.

HENRY LEOPOLD.

Sworn and subscribed this 2nd day of May, 1866, before me.
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons,
Notary Public,
Chicago, Illinois.
[5 cent stamp, cancelled.]

Messrs. Kuh & Leopold:
Please pay to Mr. Asy five hundred doles.
J. D. LEVINSON.

521 Cir. Ct. U. S. N. D. Ill., in chancery.

*Aff't Simon Slossman.*

ISAAC KEMPNER, imp'd, &c., *ads.*
CHARLES B. CHURCHILL *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Simon Slossman, being duly sworn, says, that he knows John D. Levinson, the defendant in this cause; that Levinson was a married man and housekeeper on Adams street, and this deponent knows that said Levinson owned and possessed a large amount of personal property and household furniture in his said house as late as the 7th day of April, 1866, when deponent saw it last; that said Levinson told deponent it had cost him, said Levinson, about $3,500, to $3,750, and deponent thinks the said furniture was worth about $3,000, and said Levinson offered it to deponent for the sum of $2,500 on Monday, the 9th day of April, 1866.

SIMON SCHLOSSMAN.

Sworn this 7th day of May, 1866, before me.
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons,
Notary Public,
Chicago, Illinois.
[5-cent stamp, cancelled.]

522 Cir. Ct. U. S. N. D. Ill., in chancery.

*Aff't John B. Lawkin.*

ISAAC KEMPNER, imp'd, &c., *ads.*
CHARLES B. CHURCHILL *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Joshua B. Lawkin, of Chicago, being duly sworn, says that he knows John D. Levinson; and that on or about the 11th day of April,

1866, he bought the fixtures in the store of said Levinson, No. 35 South Clark street, and paid him $500 in cash for said fixtures.

J. B. LAWKIN.

Sworn and subscribed this 7th day of May, 1866, before—

[SEAL.] GERHARD FOREMAN, *Notary Public.*

Gerhard Foreman,
Notary Public
Chicago, Illinois.

[5-cent stamp, cancelled.]

523 Cir. Ct. U. S. N. D. Ill., in chancery.

*Aff't Israel H. Henock.*

ISAAC KEMPNER, imp'd, &c., *ads.*
CHARLES B. CHURCHILL *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois ss:*

Israel H. Henock, being duly sworn, says that he is one of the firm of Henock Brothers, clothing merchants in Chicago; that deponent has been familiar with the said business for fourteen years, and for seven years in Chicago; that he has known the market value of woolen and cotton goods in Boston, New York, and Chicago during the past year; that there has been a decrease of the market value of woolen and cotton goods in the markets aforesaid, since January, 1866, of thirty per cent., and from the beginning of March until this time of twenty per cent.

ISRAEL H. HENOCK.

Sworn this 21st day of May, 1866, before me.

[SEAL.] LUCIUS V. PARSONS, *Notary Public.*

L. V. Parsons,
Notary Public
Chicago, Illinois.

[5-cent stamp, cancelled.]

524 Cir. Ct. U. S. N. D. Ill., in chancery.

*Aff't Henry A. Kohn.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Henry A. Kohn, being duly sworn, says he is one of the firm of H. A. Kohn & Brothers, clothing and woolen merchants in Chicago; that he has been familiar with the clothing business for some years in Chicago, and knows the market value of cloths and clothing in Boston, New York, and Chicago during the past year; that there had been a decrease in the value of such goods in the markets aforesaid,

on some goods more, and on some less, on an average of twenty per cent. since the first part of March, 1866, to this time.

HENRY A. KOHN.

Sworn this 21st day of May, 1866, before me,
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons, Notary Public, Chicago Illinois.
[5-cent stamp, cancelled.]

525 Cir. Ct. U. S. N. D. Ill., in chancery.

*Aff't Abraham Kuh.*

ISAAC KEMPNER, imp'd, &c., *ads.* CHARLES B. CHURCHILL *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Abram Kuh, being sworn, says that he is one of the firm of Kuh & Leopold, clothing merchants and dealer in piece goods of Chicago; that he has been familiar with said business for some years in Chicago; that deponent knows the market value of such goods during the past year in Boston, New York, and Chicago; that there has been a decrease in the value of clothing generally, and of woolen and cotton goods on some styles more, and on some less, making an average of decrease in the said markets of twenty per cent. since the first part of March, 1866, to this time.

AB. KUH.

Sworn this 21st day of May, 1866, before me,
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons, Notary Public, Chicago, Illinois.
[5-cent stamp, cancelled.]

526 Cir. Ct. U. S. N. D. Ill., in chancery.

*Aff't Chauncey S. Bowen.*

ISAAC KEMPNER, imp'd, &c., *ads.* LEWIS FRIEDLANDER *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Chauncey S. Bowen, of Chicago, being duly sworn, says that he is one of the firm of Bowen & Brothers, in said city, wholesale merchants and general merchants in dry goods and piece goods; that this depo-

nent is familiar with the market prices of goods in Boston, New York, and Chicago, during the past year, and for several years previous; and this deponent says that from the fore part of March, 1866, to the present time, there has been a decline from fifteen to (30) thirty per cent. in the market value of woolen and cotton goods in the aforesaid markets.

CHAUNCEY S. BOWEN.

Sworn this 22nd day of May, 1866, before me.
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons,
Notary Public,
Chicago, Illinois.
[5-cent stamp. cancelled.]

527 Cir. Ct. U. S. N. D. Ill., in chancery.

*Aff't William M. Woodhull.*

ISAAC KEMPNER, imp'd, &c., with John D. Levinson, *ads.* LEWIS FRIEDLANDER *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

William M. Woodhull, of the city of New York, being duly sworn, says that he is one of the firm of Weaver, Richardson & Co., importers and wholesale dealers in woolens and goods adapted to men's wear, at Nos. 66 and 68 Reade st., in the city of New York; that this deponent, as a member of said house, has been familiar with the market price and value of such goods above mentioned during all of the last year in the city of New York, as one of the points of supply of such goods for Chicago and other western cities; and this deponent says that from the first of March, 1866, to the first of April, 1866, there was a decline and decrease in the market value and price of woolen and goods adapted to men's wear in the market of New York city of from twenty-five to thirty per cent.; that the said house
528 of Weaver, Richardson & Co. is one of the oldest and largest importing houses in the said city of New York; that as a commercial law it necessarily follows that the prices of such goods will decrease and fall off in Chicago and other western cities, with the decrease and and falling off of such prices in the city of New York, the commercial centre and point of supply for such goods.

WM. M. WOODHULL.

Sworn this 29th day of May, 1866, before me.
[SEAL.] LUCIUS V. PARSONS, *Notary Public.*
L. V. Parsons,
Notary Public,
Chicago, Illinois.
[5-cent int. rev. stamp, cancelled.]

Circuit Court U. S. N. D. Ill.

*Aff't Frederick Crumbaugh.*

ISAAC KEMPNER, imp'd, &c., *ads.*
CHARLES B. CHURCHILL *et al.* } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Frederick Crumbaugh, of Chicago, being duly sworn, says that he is one of the firm of Richards, Crumbaugh & Shaw, in said city, wholesale merchants, and general merchants in dry goods
529 and piece goods; that this deponent is familiar with the market price of goods in Boston, New York, and Chicago during the past year, and for several years previous; and this deponent says that from the fore part of March, 1866, to the present time there has been a decline of from fifteen to thirty per cent. in the market value of woolen and cotton goods in the aforesaid markets.

FREDERICK CRUMBAUGH.

Subscribed and sworn to this 22d day of May, A. D. 1866, before me.

[SEAL.] HENRY H. HAMLIN, *Notary Public.*
H. H. Hamlin,
Notary Public,
Chicago, Illinois.
[5-cent stamp, cancelled.]

Cir. Ct. U. S. N. D. Ill.

*Aff't James Marks.*

ISAAC KEMPNER, imp'd, &c., with JOHN D. Levinson, *ads.*
CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stich, and Leopold Lithaner. } In chancery.

U. S. OF AMERICA, *Northern District of Illinois, ss:*

530 James Marks, of the city of Chicago, being duly sworn, says that this deponent has resided in Chicago twenty-two years, and deponent has been for the whole of that time in the business of a merchant tailor and making and selling ready-made clothing, except about one or two years from 1857 to 1859.

And this deponent further says, that on Tuesday, the 24th day of April, this deponent, on request of Isaac Kempner, made a full and thorough examination of the stock of goods purchased by said Kempner of John E. Levinson, now in the basement No. 77 Lake street. Said goods were all removed from the boxes, and compared with the entries and cost marks and prices set down in the bill of sale from Levinson to Kempner.

And this deponent further says, that in his opinion and judgment, the said stock, taken as a whole as it run, is not worth over fifty cents in the dollar on the invoice prices of said inventory, to be bought all together, good, bad and indifferent, for the purposes of any legitimate trade, and especially for cash all down; and deponent gives as his reasons for this opinion that said stock is not a good assortment, there being too much of some things and too little
531 of others. There are among said goods many mere remnants, and old and unsaleable goods; for many of said goeds are at a price far higher than the prices on the ninth April and since. The market was then falling, and such goods would no longer bring cost price; that many of the goods in said stock can now be bought from 25 to 30 per cent. cheaper than in December and January last, and from 15 to 20 per cent. cheaper than in March last; that if the said inventory or bill of sale contains the correct cost price of said stock, they were, many of them, badly bought, and far too high for the market, even as late as in January or March; that it is the well-settled rule among retailers of such stocks of goods that no trade of that sort can be successful unless by a profit of 33⅓ per cent., to cover expenses, insurance, interest, &c., and that to buy out such a stock for cash in a lump and save himself, every dealer must calculate for at least that profit; that for these reasons, after examining said stock, this deponent states to the court that he considers the amount of fifty-five per cent. on such invoice paid by said Kempner as a full and ample consideration for such stock, all the same was worth to sell out again; and this deponent, as a dealer, would
532 not have given fifty cents in the dollar for said stock for such purchase.

JAMES MARKS.

Sworn this 28th day of April, 1866, before me.

[SEAL.] LUCIUS V. PARSONS, *Notary Public.*

L. V. Parsons,
Notary Public,
Chicago, Illinois.

[5-cent stamp, cancelled.]

Cir. Ct. U. S. N. D. Ill.

*Aff't Conrad Witkowsky.*

ISAAC KEMPNER, imp'd, &c., with JOHN D. Levinson, *ads.*
CHARLES B. CHURCHILL, LEONARD K. SMITH, Lewis Friedlander, Julius Stitch, and Leopold Lithaner.
} In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Conrad Witkowsky, of the city of Chicago, being sworn, says that he knows both the defendants, Isaac Kempner and John D. Levinson; that for some days before said sale said Levinson was running to

deponent's business place several times, in and out, to see
533 Isaac Kempner; that before said sale said Kempner consulted deponent whether he should buy said stock of Levinson for fifty-five cents in the dollar, and deponent advised him not to give over fifty cents, as said stock was worth no more; that about Saturday, the last of the week, before said sale, said Levinson was in deponent's place, No. 77 Lake st.; deponent told said Levinson he, said deponent, would not give fifty cents for the stock; that this conversation was with David Witkowsky, sen., and said Levinson. Deponent asked said Levinson, who was after Kempner to buy said stock, why he didn't sell out to Henry Adler, and he said Adler hadn't money enough.

And this deponent further says, that he has been about twelve years in the business of a merchant clothier, and to a large extent, and is familiar with that class of goods; that this deponent knows and has fully examined the stock of goods sold by said Levinson to said Kempner; and this deponent states to this court that he regards fifty-five cents upon the cost price mark of said goods, as given in said inventory, as all such goods were worth at the time of sale, bought as a whole for cash down, and for the purposes of
534 being sold again at a profit; that some of such goods here are old stock; many were bought at high prices on a failing market; and deponent says that it makes a great difference whether goods are bought in New York on credit or for cash; and deponent knows that such goods were bought by Levinson on some long credits.

This deponent further says, that deponent would not have given even fifty cents in the dollar in cash for that stock of goods, with the expectation of any sale at a profit, such as merchants should make for their time and capital.

CONRAD WITKOWSKY.

Sworn this 27th day of April, 1866, before me.

[SEAL.] LUCIUS V. PARSONS, *Notary Public.*

L. V. Parsons,
Notary Public,
Chicago, Illinois.

[5-cent int. rev. stamp, cancelled.]

535 And here follows the affidavits put in evidence by the complainants under the said stipulation :

*Affidavits on behalf complainants.—Affidavit of H. C. Berry.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Henry C. Berry says he has been for the last four (4) years employed as manager, clerk, &c., in the house of Chas. Beardslee & Bro. 56 Lake st., Chicago, which s'd firm, also, have had another house

of the same character at 75 and 77 Duane st., New York, and another at 102 North Main st., St. Louis; that during all that time each of s'd three houses have been largely engaged in the business of "wholesale piece goods for men's wear;" that during that period it has been his duty to be, and he has been acquainted with the New York, St. Louis, and Chicago markets, for the sale of piece goods; that he is, and has been, especially acquainted with the Chicago market; that during the summer and fall of 1865, prices of "piece goods," such as cloths, casimeres, vestings, and everything used in making men's clothing, were firm and regular, and rather tending upwards
536 until the middle or latter part of Dec'r, and then trade fell off; that during the month of January, 1866, and early part of February, there was a considerable decline in prices caused by want of confidence and the trade offering; that on or about the first of March, buyers came forward, and trade commenced at the then low prices, as compared with the previous fall prices; that from that time the general prices ruled regular, until the demand in the market caused prices gradually to enhance on all good and seasonable goods; that from that down to the present time, there has been no decline of any character or nature, unless they were inferior or very unseasonable goods.

The s'd Berry, further says, that about the 10th of April, he heard that the def't, Levinson, had sold his stock of piece goods and ready-made clothing to the def't, Kempner; that knowing that Levinson was indebted to the New York house of Chas. Beardslee & Bros., he commenced his enquiry about the matter, in pursuit of which he called at 77 Lake st., Chicago, and saw there David Witkowsky, sr., and the def't, Kempner, both of whom said Kempner had bought the stock at 55 cts. on prime New York cost, and paid the cash therefor; that the stock was then at 77 Lake st., and that def't, Kemp-
537 ner, was then engaged in regulating and packing said goods for removal; that in conversation then had with Kempner, he stated that he was not aware of the fact that Levinson was indebted to his eastern creditors; that since his purchase, as they had made so much noise about the sale and purchase, that on the repayment of the money by him paid to Levinson, and $1,500 $\frac{00}{100}$, they could have the goods; that he, affiant, replied to [to] Kempner, that he would see about it; that some few days afterwards, on going to see him in reference to the first offer, he then stated he would not take less than $2,500$\frac{00}{100}$ over and above what he had paid Levinson, and that he did not care about taking that, as he could get one hundred cents on the dollar of prime cost in the usual course of trade; that this was said in the presence of David Witkowsky, jr., and the younger Mr. Witkowsky, and that they both expressed the same opinion; that he, affiant, went to see Kempner to take the goods at the first offer, to wit, $1,500$\frac{00}{100}$ advance on amount, p'd by Kempner to Levinson, and this he did after consultation with parties interested in making their debts out of Levinson; that, although, he went to make this offer, he did not do so, because, before he could do so, Kempner said
538 he would not take less than $2,500$\frac{00}{100}$ advance, in consequence

of which affiant abandoned the idea of getting the goods by negotiation.

The affiant further says, he saw some of the goods there at 77 Lake st.; that he he saw both clothing and piece goods, that he thought, from the general appearance, that they were good and seasonable; that from the fact that they were not arranged in anything like form, and from the fact that he was there only a short time, he did not and could not make a general or thorough examination.

H. C. BERRY.

Subscribed and sworn to before me, by Henry C. Berry, this 19th day of May, A. D. 1866.

[SEAL] Simeon W. King, United States Commissioner, Chicago, Ills.

SIMEON W. KING,
*U. S. Commissioner.*

539 *Aff't of Wetmore G. Thompson.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Wetmore G. Thompson says he is a member of the firm of Tuttle, Thompson & Wetmore, 88 Lake street, Chicago, engaged in the business of wholesale clothing trade; that they have been engaged in said business for the last three years in Chicago; that during that time he has been acquainted with the clothing markets of Boston, New York, and Chicago; that in the spring of 1865 the market was depressed and difficult to determine; that in the fall prices advanced very much over spring rates, and continued to advance until about the middle of October or first of November; that then the market become steady; that it so continued without concessions on any class of goods until December; that then there was no general decline, but that for the item of overcoats there was not much demand, and the wholesale dealers, in many instances, sold them for a lower rate for cash; that from the first of Jan., 1866, to the first of March, the decline was great, and it was impossible to determine the market
540 prices; that everything was uncertain; that then the market had gone to the bottom, as it afterwards proved; that then merchants commenced buying and selling; that from that time to this there has been no general decline in market prices; that there may have been some goods that, in some instances, sold for a less rate without indicating a general decline; that now prices are firmer than they were about the first of March; that by the first of April there was no general decline; that by that time there may have been a slight rise in the price of desirable and seasonable goods, but still only such a change as indicated firmness and give confidence; that all

the foregoing statements are intended to apply to the Boston, New York, and Chicago markets; that Chicago merchants aim to sell at what the same goods are sold for in the east; that in some instances the market at Chicago is more favorable to the buyer, but these are exceptional cases; that the general rule is to sell at eastern prices with costs of transportation added.

WETMORE G. THOMPSON.

Subscribed and sworn to, before me, by Wetmore G. Thompson, this the 18th day of May, A. D. 1866.

[SEAL] SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

541 Circuit Court in and for said district.

*Affidavit of William A. Northrop.*

C. B. CHURCHILL *et al.* } Chancery.
*vs.*
JNO. D. LEVINSON *et al.* }

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

William A. Northrop says he is, and has been for about three years, a resident of the city of New York; that during that time he has been engaged as salesman in houses engaged in the business of manufacturers & jobbers of clothing; that for nearly two years last past he has been engaged as such salesman in the house of Henry & John Parett, jr., 55 Chambers st., N. Y.; that from 1852 up to the present time he has been engaged in the clothing business in St. Louis, Mo., Chicago, Ill's, and New York, and that he is still in the same business. He further says that for the last two or three years he had been well acquainted with the clothing market of New York, and other points; that in New York, between the month of June, 1865, and Jan. 1st, 1866, there was no material change in prices; that between Jan. 1st, 1866, and March 1st, 1866, the prices depreciated about 10 or 15 per cent.; that about the 1st of March the prices ceased to go down and the market became firm and
542 steady; that from that until the present time there has been no material change in the market price; if any change has taken place, it is such as to indicate a rise in price; that on the 14th day of March, 1866, he, as salesman in the aforesaid house of Henry & John Paret, jr., sold to John D. Levinson, of Chicago, a bill of goods. He hereto attaches said bill as part hereof, marked (A.) He says the goods described in s'd bill were first-class goods, and were sold at less than the regular prices of the house, and of those in the city dealing in and selling the same class goods; that the same were sold to Levinson as a first-class purchaser; that they are the same goods

for which s'd Levinson gave his note, and the same for which the s'd Henry & John Paret, jr., have their judgment in this court for $853 50-100; that since the 14th day of March, 1866, there has been no day when the same goods should not have sold for the same or a higher price; that since then he has sold the same kind and class of goods for a higher price; that s'd goods so sold to Levinson, were at the time they were sold to him well worth the price for which they were sold, and that the market price thereof has ever since then been as high as when they were sold.

543

WM. A. NORTHROP.

Signed and sworn to before me by William A. Northrop, this the 7th day of May, A. D. 1866.

[SEAL.]

SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

A.

Shipped per Union Line.

NEW YORK, *March* 14, 1866.

Mr. John Levinson, Chicago, Ills.:

Bought of Henry & John Paret, jr., manufacturers, and jobbers of clothing, 55 Chambers st., adjoining Stewart's.

Terms: 4 months. Note payable at bank with exchange, or 50 per cent. discount for cash.

| | | | | | |
|---|---|---|---|---|---|
| 1490 | 6 | Fr'ch bl. s'ks col'd | 18 | 108 | |
| 1499–1501–2 | 6 | F'cy cass. suits | 26 | 156 | |
| 1348–50–1 | 6 | " " " | 25 | 150 | |
| 1164–5 | 12 | " " v. and p'ts | 11,50 | 138 | |
| 1029 | 5 | " " p'ts | 9,50 | 47 | 50 |
| 1172 | 12 | Bl'k doe " | 9 | 108 | |
| 1276 | 12 | " " " | 12 | 144 | |
| 661 | 1 | Case coop'ge and c't'ge | | 2 | |
| | | | | $853 | 50 |

Rec'd pay'm't note.

HENRY & JOHN PARET, JR.
COFFIN.

[Revenue stamp, cancelled.]

544 *Affidavit of Phillip Wadsworth.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Philip Wadsworth, of the house of Philip Wadsworth & Co., 34 and 36 Lake st., Chicago, and 95 Devonshire st., Boston, says he has lived and been in the business of wholesale clothing in the city of Chicago for the last thirteen years; that he has, during all that time been well acquainted with the clothing market in the city of Boston, New York, and Chicago; that [that] the Chicago market and prices have all the time been about the same as in New York and Boston; that there is at no time more difference than costs of transportation; that in the spring of 1865 there was a temporary decline, or rather a panic in the markets, consequent upon the capture of Richmond and Gen. Lee's army; that soon thereafter the markets rallied, and when the fall trade set in, say in July, 1865, prices steadily advanced and reached the culminating figure about the first or middle of Oct., and remained firm until the end of the year, with less demand for goods in Dec'r 1865; that in the month of Jan., 1866, there was
545 little or no trade, and prices tending downwards; that in Feb., there were great concessions on the price of goods in the hands of original holders, such as importers and manufacturers; that during March, that is to say, early in March, (not later than the 10th of March,) goods had fallen considerably, and by that time reached the lowest point; that from that time, to wit, March 10th, 1866, the prices have been firm, and on some grades there has been an advance; that from March 10th, 1866, to the present time, there has been no decline in the price, either in Boston, New York, or Chicago.

PHILIP WADSWORTH.

Subscribed and sworn to before me by Philip Wadsworth, this the 14th May, A. D. 1866.

[SEAL.]

SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State Illinois.*

546 *Affi't of Jacob Eberhardt.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Jacob Eberhardt says [says] he is, and has been for the last three years and a half, been engaged as merchant tailor and dealer in gentlemen's furnishing goods in Chicago, Illinois; that during all that time he has been acquainted with the Chicago clothing market; that from the fall of 1865 to the first of Jan., 1866, there was no decline

in the price of clothing in Chicago; that during that time the price of seasonable goods remained firm; that in the months of January and February, 1866, there was a considerable decline in the price; that by the first of March, 1866, or about that time, the markets became stable; that since then, neither in the months of March, April, or May, has there been any general decline in the price of goods in the Chicago market; that in and during the whole of April, the price was at least as high, if not higher, than in the month of March.

JACOB EBERHARDT.

Subscribed and sworn to before me by Jacob Eberhardt, this the 16th day of May, A. D. 1866.

[SEAL.] SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

547 *Affidavit of Benjamin F. Webster.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

C. B. CHURCHILL *et al.* }
*vs.*
JNO. D. LEVINSON *et al.* }

Benjamin F. Webster, of the house of Webster, Marsh & Co., 67 Lake st., Chicago, and of Webster, Stelle, Yoe & Co., St. Louis, Mo., says he has been engaged in the wholesale clothing business in St. Louis and Chicago since 1849 that since the summer of 1861; he has resided and been engaged in said business in the city of Chicago; that during all that time he has found it necessary to keep himself acquainted with the eastern markets, and the markets of St. Louis and Chicago; that he spends about one-third of his time in the east buying goods for the Chicago and the St. Louis markets; that he thinks he is acquainted with markets of Chicago and New York; that the custom of New York merchants is, and has been for years, to sell their goods on credit of four months, and their prices are regulated accordingly; that for cash they make a discount of one per cent. per month; that some houses will not make so large a discount; that in the spring of 1865 there was not much price for goods;
549 that all was doubt and uncertainty; that in the fall of that year the prices in his line of trade were higher and more permanent; that from the first of Jan. to the first of March, 1866, the prices had gone down very much; that very soon after the first of March prices became firmer; and on some classes of goods the prices have steadily advanced to this date, that is to say, there are some classes of goods that command higher prices than they did about the 1st of March last; that between the 10th of March, to the 10th of April, there was not much change in prices; some kind of goods might have been bought for a little less, but upon goods in his line generally, there was, between the last-named dates, little or no change either way; that in February last it was difficult to tell the price of goods; that

by the first of March, or about that time, the market had become more firm and steady and have continued so to this time. And that all he has hereinbefore stated is true and applies to the New York, Boston, and Chicago markets; and that the Chicago market is regulated by and follows the Boston and New York markets.

BENJAMIN F. WEBSTER.

Subscribed and sworn to before me by Benjamin F. Webster, this the 15th day of May, A. D. 1866.

[SEAL] SIMEON W. KING,
*U. S. Commissioner for the Northern District of Illinois.*

550 *Aff't of Alexander Young.*

C. B. CHURCHILL *et al.*
*vs*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Alexander Young says that he is one of the firm of Young Brothers & Co., 33 and 35 Lake street Chicago, and 135 Main street St. Louis, Mo., and one of the firm of T. S. Young & Co., 120 Chambers street, New York. That the New York house is engaged in the business of buying goods and manufacturing clothing, and the s'd Chicago and St. Louis houses are wholesale clothing houses; that the Chicago house was established three years since, and the St. Louis house in 1845; that he had been connected with said firm for ten years; that he has resided in Chicago for three years; that from the commencement of the Chicago house, he has had the principal control thereof; that for the last ten years he has been acquainted with the New York and Chicago and St. Louis clothing markets; that during the fall of 1865 the price of clothing was firm and steady; that from the first of Jan 1866, to the 1st of March, there was a consid-
551 erable decline, on goods, especially on American goods, but that on foreign goods (such as cloths, cassimeres, black and Farmer's satins, and all kinds of linens, Spanish linens, linen ducks and linen drills) there was scarcely any decline, as they were contracted by the price of gold; that from the first of March to the present time, there has been very little if any decline on any grade of goods in his line; that on some goods there has been an advance; that between the 10th of March and 10th of April, 1866, there was no decline in the price of goods. And that he intends the foregoing statements to apply to the Chicago and New York markets, and that the prices in Chicago are always the same with those in New York, with cost of transportation added.

ALEXANDER YOUNG.

Subscribed and sworn to before me by Alexander Young, this 15th day of May, A. D. 1866.

[SEAL] SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

552 *Affidavit of Chas. A. Morse.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Charles A. Morse says that for the last thirteen years he has been engaged as dry good merchant and as jobber of ready-made clothing. For the last two years and a half he has been a member of the firm of Wm. R. Lovejoy & Co., Nos. 15 and 17 Lake st., Chicago, which house for two years and a half has been and still is engaged in the wholesale clothing business in Chicago; that he has during the time of his connection with s'd house been well and intimately acquainted with the Chicago, New York and Boston markets, for ready-made clothing; that during that time the Chicago market is and has been about the same with the eastern market, with freight and cost of transportation added; that in the spring of 1865 there was in Chicago and east a depreciation in the price of ready-made clothing; that in the fall of that year the market rallied and goods commanded as good
553 prices as they had done the previous fall, (1864;) that between the 15th Dec'r 1865, and the 20th Feb. 1866, there was no settled price for goods, the decline was great; that in that time the decline in price ranged from ten to fifty per cent.; that about the [the] 20th of Feb., 1866, the market became steady, and from that time to this there had been a slight improvement in prices in favor of the seller; that the price of some goods have appreciated from ten to twelve per cent., and balance of goods have remained firm; that all the time since the 1st of March the market has been improving in favor of the seller.

CHAS. A. MORSE.

Subscribed and sworn to before me by Chas. A. Morse, this the 14th A. D. 1866.

[SEAL.]

SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

554 *Aff't Morris Selz.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Morris Selz says he is, and has been, the manager of the Chicago house of J. Stettheimer & Co.; that they are at 46 White street, New York, engaged largely in importing all kinds of goods used in making men's clothing, and engaged also in dealing in American goods, and manufacturing and selling clothing; that the Chicago house

by the first of March, or about that time, the market had become more firm and steady and have continued so to this time. And that all he has hereinbefore stated is true and applies to the New York, Boston, and Chicago markets; and that the Chicago market is regulated by and follows the Boston and New York markets.

BENJAMIN F. WEBSTER.

Subscribed and sworn to before me by Benjamin F. Webster, this the 15th day of May, A. D. 1866.

[SEAL] SIMEON W. KING,
*U. S. Commissioner for the Northern District of Illinois.*

550 *Aff't of Alexander Young.*

C. B. CHURCHILL *et al.*
*vs*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Alexander Young says that he is one of the firm of Young Brothers & Co., 33 and 35 Lake street Chicago, and 135 Main street St. Louis, Mo., and one of the firm of T. S. Young & Co., 120 Chambers street, New York. That the New York house is engaged in the business of buying goods and manufacturing clothing, and the s'd Chicago and St. Louis houses are wholesale clothing houses; that the Chicago house was established three years since, and the St. Louis house in 1845; that he had been connected with said firm for ten years; that he has resided in Chicago for three years; that from the commencement of the Chicago house, he has had the principal control thereof; that for the last ten years he has been acquainted with the New York and Chicago and St. Louis clothing markets; that during the fall of 1865 the price of clothing was firm and steady; that from the first of Jan 1866, to the 1st of March, there was a consid-
551 erable decline, on goods, especially on American goods, but that on foreign goods (such as cloths, cassimeres, black and Farmer's satins, and all kinds of linens, Spanish linens, linen ducks and linen drills) there was scarcely any decline, as they were contracted by the price of gold; that from the first of March to the present time, there has been very little if any decline on any grade of goods in his line; that on some goods there has been an advance; that between the 10th of March and 10th of April, 1866, there was no decline in the price of goods. And that he intends the foregoing statements to apply to the Chicago and New York markets, and that the prices in Chicago are always the same with those in New York, with cost of transportation added.

ALEXANDER YOUNG.

Subscribed and sworn to before me by Alexander Young, this 15th day of May, A. D. 1866.

[SEAL] SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

552 *Affidavit of Chas. A. Morse.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Charles A. Morse says that for the last thirteen years he has been engaged as dry good merchant and as jobber of ready-made clothing. For the last two years and a half he has been a member of the firm of Wm. R. Lovejoy & Co., Nos. 15 and 17 Lake st., Chicago, which house for two years and a half has been and still is engaged in the wholesale clothing business in Chicago; that he has during the time of his connection with s'd house been well and intimately acquainted with the Chicago, New York and Boston markets, for ready-made clothing; that during that time the Chicago market is and has been about the same with the eastern market, with freight and cost of transportation added; that in the spring of 1865 there was in Chicago and east a depreciation in the price of ready-made clothing; that in the fall of that year the market rallied and goods commanded as good
553 prices as they had done the previous fall, (1864;) that between the 15th Dec'r 1865, and the 20th Feb. 1866, there was no settled price for goods, the decline was great; that in that time the decline in price ranged from ten to fifty per cent.; that about the [the] 20th of Feb., 1866, the market became steady, and from that time to this there had been a slight improvement in prices in favor of the seller; that the price of some goods have appreciated from ten to twelve per cent., and balance of goods have remained firm; that all the time since the 1st of March the market has been improving in favor of the seller.

CHAS. A. MORSE.

Subscribed and sworn to before me by Chas. A. Morse, this the 14th A. D. 1866.

[SEAL.]

SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

554 *Aff't Morris Selz.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Morris Selz says he is, and has been, the manager of the Chicago house of J. Stettheimer & Co.; that they are at 46 White street, New York, engaged largely in importing all kinds of goods used in making men's clothing, and engaged also in dealing in American goods, and manufacturing and selling clothing; that the Chicago house

is largely engaged in the same business, except importing foreign goods; that for the last eight years he had had the exclusive management of the Chicago house, and during that time he had been well acquainted with the New York and Chicago markets for the sale of ready-made clothing and all kinds of cloths, cassimeres, and other goods used in making men's clothing; that during the latter part of the summer and the fall of 1865, the price of clothing and the other goods above spoken of was firm; that in January, 1866, there was not so much demand for goods; that in the month of February there
555 were large concessions made on the part of the seller, and that by the first of March the price of clothing and piece goods had come down considerably; that the decline was especially great in American goods—foreign goods only falling with gold and foreign exchange; that prices reached the lowest figure about the middle of March; that from since that time there had been no general decline; that from that time to this the market has been steady; that all that he has said is intended to apply to the Chicago and New York markets.

MORRIS SELZ.

Subscribed and sworn to before me, by Morris Selz, this the 17th day of May, A. D. 1866.

[SEAL.] SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

556 United States Circuit Court for the northern district of Illinois.

*Aff't Charles Beardslee.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } In chancery.

UNITED STATES OF AMERICA, *State of New York, ss:*

Charles Beardslee, of the city of New York, being duly sworn, says that he is one of the firm of Charles Beardslee & Brothers, importers and jobbers in foreign and domestic piece goods, for men's wear, at Nos. 75 and 77 Duane st., N. York city; that on the 13th day March, A. D. 1866, said firm sold one John D. Levinson a bill of goods, amounting to fourteen hundred and thirty-seven 81-100 dollars, as per bill, hereto attached, marked Exhibit "A." At the time of such sale said goods were worth the amount for which they were sold. They were sold on four months' time; that from the time of such sale to the 10th day of April, 1866, said goods did not depre-
557 ciate in value to exceed five per cent. The said goods were shipped to said Levinson, at Chicago, immediately after such sale. At the time they were sold said Levinson was believed to be responsible, and they were sold at our usual rates and prices. They are the same goods for which a judgment had been recovered against

said Levinson, in favor of said firm, in the U. S. Circuit Court for the northern district of Illinois; and further saith not.

CHAS. BEARDSLEE.

Sworn to before me this 10th May, 1866.

R. E. STILWELL,
*U. S. Comm'r.*

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well aquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the Circuit
558 Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[25-cent stamp, cancelled.]
K. G. W.
11th May, 1866.

NEW YORK, *March 13th*, 1866.

Mr. John D. Levinson, Chicago, Ills.:

Bought of Chas. Beardslee & Bros., importers and jobbers in foreign and domestic piece goods for men's wear, Nos. 75 and 77 Duane street, (up stairs,) New York.

Chas. Beardslee, P. Beardslee, New York; R. Beardslee, Chicago. Terms, 4 mo's.

| | | | | | |
|---|---|---|---|---|---|
| | 1 | pcs hair cloth, $41^2$ | 60 | | 24 90 |
| | 1 | " cashmere, 7-8 | 4 50 | | 3 94 |
| 1,362 | 1 | " Canary satin declined, $46^1$ | 1 50 | | 69 38 |
| 1,726 | 1 | " brown " " $45^3$ | 1 25 | | 57 19 |
| 2,230 | 1 | " fancy cass., $33^3$ | 1 75 | | 58 62 |
| | 3 | " " " $75^3$ | 2 $12^3$ | | 160 96 |
| | 8 | " 6-4 Austrian coatings, $119^3$ | 6 25 | | 746 88 |
| 88,764 | 1 | " " Bischoff doeskin, $26—25\frac{7}{8}$ | 10 00 | | 258 75 |
| 7,828 | 1 | " fancy cass., "To fill," $31^1$ | 1 75 | | 54 69 |
| | 1 | box and cooperage | | | 2 50 |
| | | | | | $1,437 81 |

is largely engaged in the same business, except importing foreign goods; that for the last eight years he had had the exclusive management of the Chicago house, and during that time he had been well acquainted with the New York and Chicago markets for the sale of ready-made clothing and all kinds of cloths, cassimeres, and other goods used in making men's clothing; that during the latter part of the summer and the fall of 1865, the price of clothing and the other goods above spoken of was firm; that in January, 1866, there was not so much demand for goods; that in the month of February there
555 were large concessions made on the part of the seller, and that by the first of March the price of clothing and piece goods had come down considerably; that the decline was especially great in American goods—foreign goods only falling with gold and foreign exchange; that prices reached the lowest figure about the middle of March; that from since that time there had been no general decline; that from that time to this the market has been steady; that all that he has said is intended to apply to the Chicago and New York markets.

MORRIS SELZ.

Subscribed and sworn to before me, by Morris Selz, this the 17th day of May, A. D. 1866.

[SEAL.] SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

556 United States Circuit Court for the northern district of Illinois.

*Aff't Charles Beardslee.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } In chancery.

UNITED STATES OF AMERICA, *State of New York, ss:*

Charles Beardslee, of the city of New York, being duly sworn, says that he is one of the firm of Charles Beardslee & Brothers, importers and jobbers in foreign and domestic piece goods, for men's wear, at Nos. 75 and 77 Duane st., N. York city; that on the 13th day March, A. D. 1866, said firm sold one John D. Levinson a bill of goods, amounting to fourteen hundred and thirty-seven 81-100 dollars, as per bill, hereto attached, marked Exhibit "A." At the time of such sale said goods were worth the amount for which they were sold. They were sold on four months' time; that from the time of such sale to the 10th day of April, 1866, said goods did not depre-
557 ciate in value to exceed five per cent. The said goods were shipped to said Levinson, at Chicago, immediately after such sale. At the time they were sold said Levinson was believed to be responsible, and they were sold at our usual rates and prices. They are the same goods for which a judgment had been recovered against

said Levinson, in favor of said firm, in the U. S. Circuit Court for the northern district of Illinois; and further saith not.

CHAS. BEARDSLEE.

Sworn to before me this 10th May, 1866.

R. E. STILWELL,
*U. S. Comm'r.*

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well aquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the Circuit
558 Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[25-cent stamp, cancelled.]
K. G. W.
11th May, 1866.

NEW YORK, *March 13th*, 1866.

Mr. John D. Levinson, Chicago, Ills.:

Bought of Chas. Beardslee & Bros., importers and jobbers in foreign and domestic piece goods for men's wear, Nos. 75 and 77 Duane street, (up stairs,) New York.

Chas. Beardslee, P. Beardslee, New York; R. Beardslee, Chicago. Terms, 4 mo's.

| | | | | | |
|---|---|---|---|---|---|
| | 1 | pcs hair cloth, $41^{2}$ | 60 | | 24 90 |
| | 1 | " cashmere, 7-8 | 4 50 | | 3 94 |
| 1,362 | 1 | " Canary satin declined, $46^{1}$ | 1 50 | | 69 38 |
| 1,726 | 1 | " brown " " $45^{3}$ | 1 25 | | 57 19 |
| 2,230 | 1 | " fancy cass., $33^{3}$ | 1 75 | | 58 62 |
| | 3 | " " " $75^{3}$ | 2 $12^{3}$ | | 160 96 |
| | 8 | " 6-4 Austrian coatings, $119^{3}$ | 6 25 | | 746 88 |
| 88,764 | 1 | " " Bischoff doeskin, $26—25\frac{7}{8}$ | 10 00 | | 258 75 |
| 7,828 | 1 | " fancy cass., "To fill," $31^{1}$ | 1 75 | | 54 69 |
| | 1 | box and cooperage | | | 2 50 |
| | | | | | $1,437 81 |

559 United States Circuit Court for the northern district of Illinois.

*Aff't Isaac Farnbaker.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } In chancery.

U. S. OF AMERICA, *State of New York, ss:*

Isaac Farnbaker, of the city of New York, being duly sworn, says that he is one of the firm of J. Farnbaker & Co.; that on the 12th day of March, 1866, said firm sold to one John D. Levinson, of Chicago, a bill of goods, amounting to two hundred and eighty-eight 93-100 dollars; that at the time of such sale said goods were worth the amount for which they were sold, and continued to be worth that sum until the 10th day of April, 1866; that said goods were shipped to said Levinson, at Chicago, immediately after they were purchased by said Levinson, and were sold to him at our usual rates and prices; and further saith, that a bill of said, goods so sold, is hereto attached, marked Exhibit A.

J. FARNBAKER.

Sworn before me this 11th May, 1866.

R. E. STILWELL,
*U. S. Comm'r.*

560 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stillwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting; and I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE,
*Clerk.*

[5-cent stamp, cancelled.]
K. G. W. Mar. 11, 1866.

561 *Exhibit A.*

NEW YORK, *March 12th*, 1866.

Mr. John D. Levinson:

Bought of I. Farnbaker & Co., jobbers in men's furnishing goods, 263 Broadway, (up stairs,) bet. Warren and Chambers sts., agents for the Gloverville, N. Y., Glove Co. Terms, cash 90 days.

J. Farnbaker, A. S. Chenerman.

| | | | |
|---|---|---|---|
| 262. | 1 doz. | linen drawers | $25 00 |
| 132. | 1½ " | novia shirts, $18 | 27 00 |
| 94. | 2 " | linen h'dk'fs, 8 50 | 17 00 |
| 223. | 1 " | hem-stitched h'dk'fs | 11 50 |
| 158. | 10 " | white hose, 3 00 | 30 00 |
| 135. | 5 " | fancy " 2 12½ | 10 63 |
| 215. | 3 " | lisle " 5 50 | 16 50 |
| 332. | 1 " | " " | 8 00 |
| 58. | 6 " | fringe ties, 1 75 | 10 50 |
| | 2 " | scarfs, 12 | 24 00 |
| 305. | 2 " | bleached draw, 15 | 30 00 |
| | 1 " | brown " | 12 00 |
| 500. | 2 " | white shirts, 29 | 58 00 |
| 12. | 1 pcs. | silk h'dk'fs | 7 00 |
| | Case, 75; straping, 25; ch'dge, 50 | | 1 50 |
| | | | $288 63 |

Repayment by notes in ninety days.

I. FARNBAKER & CO.

[Int. rev., 2 cents, cancelled.]
J. F. & Co.

562 *Affi't Lessu Steinhardt.*

United States Circuit Court for the northern district of Illinois, in chancery.

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } Affidavit.

UNITED STATES OF AMERICA, *State of New York, ss* :

Lessu Steinhardt, of the city of New York, being duly sworn, says that he is one of the firm of M. Steinhardt & Co., manufacturers and wholesale dealers in men's and boys' clothing, cloths, cassimeres, &c., No. 18 Murray street and 21 Park Place, in the city of New York; that said firm has been in said kind of business for past 18 years; that on the 15th day of March, A. D. 1866, said firm sold to one John D. Levinson, of the city of Chicago, a bill of goods, which said bill is hereto attached, and marked Exhibit A; that at the time said goods were so sold they were worth the amount for which they were sold;

that they were sold on four months' time, at our usual rates
563 and prices, and believing at the time said Levinson was perfectly responsible and able to pay for the same, as agreed; that from the 15th day of March, 1866, to the 10th day of April, 1866, said goods remained and continued to be of the same value as at the time they were sold. And deponent further says that this is the same bill of goods for which a judgment has been recovered in the U. S. Circuit Court for the northern district of Illinois, in favor of said firm against said Levinson; and further saith not, except that some of the said goods were so sold, they were shipped to said Levinson at Chicago, Illinois.

LESSU STEINHARDT.

Sworn to before me this 11th May, 1866.

R. E. STILWELL, *U. S. Com'r.*

UNITED STATES OF AMERICA,

*Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stillwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his pro-
564 per handwriting; and I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent stamp, cancelled.]
K. G. W. May 11, 1866.

*Exhibit A.*

NEW YORK, *March 15th*, 1866.

Mr. John D. Levinson, Chicago, Ill.:

Bought of M. Steinhardt & Co., manufacturers and wholesale dealer in men's and boys' clothing, cloths, cassimeres, &c., No. 18 Murray street and 21 Park Place, between Broadway and Church st.

Particular attention paid to orders. Terms, cash.

| | | |
|---|---|---|
| 670. | 6 cass. pants and vests, 10 50 | $63 |
| 705. | 6 " " 13 00 | 78 |
| 729. | 6 " " , 1 vest short, 10 00 | 60 |
| 756. | 6 brown check cass. pants and vests, 10 50 | 63 |
| 639. | 7 East Windson pants and vests, 13 75 | 126 25 |
| | 720. 5 fancy cassimere pants and vests, 13 50 | 67 50 |
| 565 | 757. 6 " " " 12 25 | 73 50 |
| | 770. 12 pants and vests, (2 styles,) 13 00 | 156 |

| | | | |
|---|---|---|---|
| 763. | 6 pants and vests, 10 00 | 60 | |
| 724. | 12 fine bl'k doeskin pants, 6 short, 8 50 | 102 | |
| 751. | 6 " d. b. frocks, 16 00 | 96 | |
| 765. | 6 fine fancy cass. suits, 22 50 | 135 | |
| 765. | 6 " " pants and vests, 11 50 | 69 | |
| 653. | 6 vests, 3 75 | 22 | 50 |
| 766. | 6 extra size bl'k doeskin pants, 8 50 | 51 | |
| | Case and shipping | 2 | |
| | | $1,224 | 75 |

Rec'd payment of the foregoing bill by note, due July 16th, '66.
M. STEINHARDT & CO.

[2-cent stamp cancelled.]
M. S. & Co., March 15, '66.

566 United States District Court for the northern district of Illinois.

*Aff't Edward Coleman.*

CHARLES CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON & ISAAC KEMPNER. } In chancery.

UNITED STATES OF AMERICA, *State of New York, ss:*

Edward Coleman, of the city of New York, being duly sworn, says that he is one of the firm of C. Peck & Co., importers and manufacturers of silk and ribbon ties, scarfs, and gentlemen's furnishing goods, at No. 2½ Murray street, New York city. That on the 9th day of March, A. D. 1866, said firm of C. Peck & Co. sold to said John D. Levinson a bill of goods, amounting to the sum of two hundred and eighty-eight dollars; that said goods were sold upon a credit of ninety days, and shipped to said Levinson in Chicago immediately after they were so purchased by said Levinson; that said goods were sold to said Levinson at our usual rates of sale; that they
567 were at the time they were so sold worth the amount for which they were sold, and that there has been no time or day since such sale was made when said goods were not worth the amount for which they were sold; that the bill of said goods, made to said Levinson, is hereto attached, marked Exhibit A. And this deponent further says, that he was acquainted with Isaac Kempner for about eight years, in the city of San Francisco, California, said Kempner being one of the defendants in the above-entitled cause; that deponent has been in business, in the city of New York, for about eight years last past; and further saith not.

E. COLEMAN.

Sworn to before me this 11th day of May, A. D. 1866.
KENNETH G. WHITE,
*U. S. Commissioner, appointed by the Circuit Court of the U. S. for the Southern Dist. of New York.*

[5-cent stamp, cancelled.]
K. G. W. May 11, 1866.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Kenneth G. White, whose name is subscribed to the annexed affidavit, and that the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

568

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court, this 11th day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent stamp, cancelled.]
K. G. W. 11 May, 1866.

NEW YORK, *March 9th*, 1866.

Mr. J. D. Levinson:

Bought of C. Peck & Co., importers and manufacturers of silk and ribbon, ties, scarfs, and gentlemen's furnishing goods, 2½ Murray street.

C. Peck, E. Coleman.

Terms nett.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 569 | 133 | 1 | doz. | suspenders | | 10 | |
| | 139 | 1 | " | " | | 11 | |
| 173 | 1 | doz. | | satin scarfs | | 30 | |
| 230 | 1 | " | | " | | 24 | |
| 233 | 1 | " | | " | | 18 | |
| | 27 | " | | fringe ties | 2 50 | 67 | |
| 275 | 4 | " | | " | 2 75 | 11 | |
| 73 | 4 | " | | " | 2 25 | 9 | |
| | 7 | " | | ties 11 24, 5, 6, 8, 34 | 5 | 35 | |
| | 4 | " | | 11 14 11 21 | 4 75 | 19 | |
| 975 | 2 | " | | fancy | 4 75 | 9 | 50 |
| 975 *a* | 2 | " | | " | 3 75 | 7 | 50 |
| 1,032 | 2 | " | | bl'k | 2 50 | 5 | |
| 1,035 | 2 | " | | " | 3 50 | 7 | |
| | 2 | " | | bows | 5 | 10 | |
| 1,146 | 2 | " | | wide ends | 7 50 | 15 | |
| | | | | | | $288 | |

570 *Aff't Henry Aronson.*

U. States Circuit Court for the northern district of Illinois.

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } In chancery.

UNITED STATES OF AMERICA, *State of New York*:

Harris Aronson, of the city of New York, being duly sworn, says, that he is a manufacturer of shirts, drawers, collars, &c., and importer of men's furnishing goods; that he has been in same kind of business in N. York city for the past twenty-six years; that on the 9th day of March last deponent sold to one John D. Levinson a bill of goods amounting to twelve hundred and two 50-100 dollars; that said goods were sold to said Levinson at his usual rates and prices on a credit, and that at the time of such sale they were worth all they were sold for; and that at all times from the time of such sale to the 10th day of April last, they were worth the full amount for which they were sold; that by reference to the books of deponent he finds that he has sold the same kind and class of goods to other
571 parties (since such sale to said Levinson) for cash at as high prices as said goods were sold for to said Levinson. That deponent considered at the time of such sale that said Levinson was a first-class customer, having sold him goods before, for which he paid promptly; and deponent further says that the original bill of said goods so sold to said Levinson is hereto attached and marked Exhibit A, and that it is the same bill of goods for which judgment has been recovered in his favor against said Levinson in U. S. Circuit Court for the northern district of Illinois; and further saith not.

H. ARONSON.

Sworn to before me this 10th May, 1866.

R. E. STILWELL, *U. S. Com'r.*

UNITED STATES OF AMERICA, *Southern District of New York, ss*:

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurat, and that the signature to the the same is in his proper handwriting. And I do further certify that he was at tee time of signing the same a United States commissioner duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

572 In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court this tenth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent int. rev. stamp, cancelled.]
K. G. W., May 10, 1865.

NEW YORK, *March* 9, 1866.

Mr. J. D. Levinson, Chicago, Ill.:

Bought of H. Aronson, manufacturer of shirts, drawers, collars, &c., and importers of men's furnishing goods. Terms payable in current funds. 7 Warren street, near Broadway.

| | | | | | |
|---|---|---|---|---|---|
| | 3 dz. | 1,200 n. c. | 26 50 | 79 | 50 |
| | 2 " | 98 " | 28 00 | 56 | |
| | 2 " | 1,500 " | 31 00 | 62 | |
| | 3 " | 1,100 " | 22 00 | 66 | |
| | 2 " | bluy linen | 25 00 | 50 | |
| | 1 " | fall bosnuys | | 28 | |
| 325, | 12 " | collars 1,50 | | 18 | |
| 50. | 6 " | bro. cot. undershirts | 13 00 | 78 | |
| 60. | 3 " | " " " | 17 50 | 52 | 50 |
| 20. | 3 " | India gauze undershirts | 16 00 | 48 | |
| 360. | 6 " | " " pants | 16 00 | 96 | |
| 332. | 3 " | undershirts | 17 00 | 51 | |
| 998. | 4 " | l. c h'dk'fs | 6 00 | 24 | |
| | L. 5 | boxes pongee h'dk'fs | (10 ea.) 11 00 | 55 | |
| 573 | M. 1 | " " " | | 14 | |
| 15. | 4 dz. | calf gloves | 17 00 | 68 | |
| 12. | 2 " | " " | 12 00 | 24 | |
| 204. | 5 " | brown ½ hose | 2 50 | 12 | 50 |
| 229. | 5 " | " " | 2 62 | 13 | 13 |
| 291. | 5 " | " " | 2 75 | 13 | 75 |
| 1341. | 5 " | | 4 50 | 22 | 50 |
| 3². | 2 " | | 5 50 | 11 | |
| 18. | 3 " | | 6 25 | 18 | 75 |
| 32. | 5 " | white | 5 50 | 27 | 50 |
| 11,343. | 6 " | suspenders | 8 50 | 51 | |
| 1,600. / 1,414. | 9 " | " | 6 50 | 58 | 50 |
| 51. | 2 " | | 9 00 | 18 | |
| 658. | 2 " | | 7 00 | 14 | |
| 3. | 2 " | | 4 50 | 9 | |
| 456. | 3 " | | 7 00 | 21 | |
| | 15 " | mixed ½ hose | 2 62² | 39 | 38 |
| | | Case, &c. | | 25 | 50 |
| | | | | $12,02 | 51 |

Settled by—

Note due April 15, '66 for ..... $500 00
" " June 13, '66 for ..... 702 $\frac{51}{100}$

1,202 $\frac{51}{100}$

H. ARONSON, *W. D. N.*

[2-cent int. rev. cancelled ]
H. A. 10-3, 1862.

574 *Aff't Adolph S. Saroni.*

United States Circuit Court for the northern district of Illinois.

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER. } In chancery.

U. S. OF AMERICA, *State of New York ss*:

Adolph S. Saroni, of the city of New York, being duly sworn, says that he is one of the firm of Saroni & Linderman, manufacturers of medal shirts, &c., No. 5 Barclay street, in the city of New York; that on the 9th and 20th days of March last said firm sold to one John D. Levinson two bills of goods, which said bills are hereto attached and marked Exhibits A; that said goods were sold at our usual prices, on four months' time; that they were worth the amount for which they were sold, and continued to be of that value until the 10th day of April, A. D. 1866; that they were sold to said Levinson believing him to be a first-class customer, having sold him goods before for which he paid promptly as agreed; that said goods were shipped to said Levinson, at Chicago, soon after they were purchased as aforesaid; and further saith not.

ADOLPH S. SARONI.

575 Sworn to before me this 11th May, 1866.
R. A. STILWELL, *U. S. Com'r.*

UNITED STATES OF AMERICA, *Southern District of New York, ss*:

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same, a United States commissioner duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court, this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL] KENNETH G. WHITE, *Clerk.*

[5-cent stamp, cancelled.]
K. G. W. May, 1866.

575 *Exhibits A.*

NEW YORK, *March 9th*, 1866.

Mr. J. D. Levinson, Chicago:

Bought of Saroni & Lindemann, manufacturers of medal shirts, etc., No. 5 Barclay street.

Terms 4 mo. Note to your own order.

Adolph Saroni, Moritz Lindermann.

| | | | |
|---|---|---|---|
| 48 | 2½ doz medal shirts, | 36 | 90 00 |
| 95 | 2½ " " " | 34 | 85 00 |
| 1,400 | 5 " " " | 33 | 165 00 |
| 1,200 | 3 " " " | 29 | 87 00 |
| 1,600 | ½ " " " | 35 | 17 50 |
| | Case coop'ge, &c. | | $446 00 |

Settled by note 4 mos. fr. date.

[2 cent int. rev. stamp, cancelled.]

SARONI & LINDE AN.

*Exhibits A.*

NEW YORK, *March 20th*, 1866.

Mr. J. D. Levinson, Chicago:

Bought of Savoni & Lindemann, manufacturers of medal shirts, etc., No. 5 Barclay street.

Terms cash.

Adolph S Savoni, Moritz Lindemann.

| | | | |
|---|---|---|---|
| 103 | 2 doz. medal shirts, | 32 | 64 00 |
| 104 | 2½ " " " | 32 | 80 00 |
| 22 | 2 " " " | 33 | 66 00 |
| | Pr. a. m. express, case, etc | | 75 |
| | | | $210 75 |

*Exhibit A.*

576 U. States Circuit Court for the northern district of Illinois.

*Affi't Isaac Sinai Nathan.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC Kempner. } In chancery.

UNITED STATES OF AMERICA, *State of New York, ss:*

Sinai Nathan, of the city of New York, being duly sworn, says that he is one of the firm of Metz, Nathan & Co., manufacturers of clothing, and jobbers in cloths, cassimeres, &c., at No. 144 and 146

Chambers street, N. York city. That on the 13th day of March last deponent, for said firm, sold to John D. Levinson, of Chicago, Illinois, a bill of goods, amounting to the sum of ten hundred and eighty-six 62-100 dollars; that immediately after said sale said goods were shipped to said Levinson at Chicago, aforesaid; that at the time said goods were so sold they were worth the sum for which they were sold, and that at no time after such sale, and before the tenth day of March, A. D. 1866, were said goods worth a less sum than that for which they were sold to said Levinson; that said goods were sold at our usual rates and prices; that they are the same goods for which a judgment has been recovered in U. States Circuit Court for the northern district of Illinois, in favor of Metz, Nathan & Co., against said John D. Levinson, and further saith not.

SINAI NATHAN.

Subscribed and sworn to before me this 10th day of May, 1866.
[SEAL.] JOHN A. OSBORN,
*U. S. Comm'r.*

NEW YORK, *M'ch* 13, 1866.

Mr. Jno. D. Levinson, Chicago, Ills.:

Bought of Metz, Nathan & Co., manufacturers of clothing, and jobbers in cloths, cassimeres, &c., No. 144 and 146 Chambers street.
Metz, E. Nathan, S. Nathan.
Terms cash.

| | | | | |
|---|---|---|---|---|
| 8089–10 | 4 | silk mixed cass. suits, 27 | | 108 |
| 809–10 | 8 | " " " pants and vests, 12 50 | | 100 |
| 941 | 6 | " pants, 8 50 | | 51 |
| 942 | 4 | " vests, 4 50 | | 18 |
| 801–2 | 12 | " and pant and vests, 13 | | 156 |
| 843 | 12 | doeskin pants, 8 50 | | 102 |
| 864 | 6 | silk velvet vests, 12 50 | | 75 |
| 874 | 8 | black cloth frock coats, 17 | | 136 |
| 883 | 17 | linen dusters, 3 | | 51 |
| 976–7 | 12 | pants and vests, 12 | | 144 |
| | | Box and straps | | 1 62 |
| | | | | 942 62 |
| 976 | 12 | pants and vests, 12 | | 144 |
| | | Paid note due July 16, 1866 | | 1,086 62 |

METZ, NATHAN & CO., *M.*

[2-cent stamp, cancelled.]
March 3, 1866.

578 United States District Court for the northern district of Illinois:

*Aff't George White.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC Kempner.

U. STATES OF AMERICA, *State of New York, ss:*

George White, of the city of New York, being duly sworn, says that he is one of the firm of H. Schlesinger & Co., manufacturers of clothing, at No. 37 Murray street, New York city. That on the 7th day of March, A. D. 1866, deponent for said firm sold to said John D. Levinson a bill of goods, amounting to the sum of seventeen hundred and six dollars and fifty cents; that said goods were sold on four months' credit, at our usual rates and prices, and were worth, at the time of such sale, the amount for which they were so sold; and deponent further says, that there was no time after such sale, and before the tenth day of April, A. D. 1866, when said goods were not worth the amount for which they were so sold; and deponent further says that the original bill of said goods, containing the prices for which they were sold, is hereto attached and marked Exhibit A; that at the time of such sale he considered said Levinson a first-class customer, having sold him goods before for which he paid punctually, and further says not.

GEORGE WHITE.

Sworn to before me this 10th May, 1866.
R. E. STILLWELL, *U. S. Com'r.*

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby cartify that I am well acquainted with the handwriting of R. E. Stillwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting.

And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court, this tenth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5 cent int. rev. stamp, cancelled.]
K. G. W. May 10, 1866.

NEW YORK, *March 7th*, 1866.

580 M. J. D. Levinson:

Bought of H. Schlesinger & Co., manufacturers of clothing, 37 Murray.

Terms cash, unless settled by note to your own order.

H. Schelsinger, G. White, New York; M. Spiro, St. Louis.

| | | | | |
|---|---|---|---|---|
| 509 | 12 | pcs. | D. B. for coats, $6 50 | $318 00 |
| 499 | 12 | | do $21 50 | 258 00 |
| 517 | 6 | | fr. trils, $27 00 | 162 00 |
| | 12 | | pants and vests, $12 00 | 144 00 |
| 507 | 12 | | suits sacks, $11 00 | 132 00 |
| 459 | 9 | | sacks, $16 00 | 144 00 |
| 524 | 12 | | pants and vests, $11 75 | 141 00 |
| 510 | 12 | | suits, $16 50 | 198 00 |
| 493 | 1 | dz. | dusters | 31 50 |
| 485 | 1 | " | do | 34 50 |
| 495 | 12 | prs. | pants and vests | 141 00 |
| | | | Box str. and st'ge | 7 50 |
| | | | | 1,706 50 |

Short 4 coats of lot 499.

Do. 4 vests do. 514.

Forwarded by U. Star line.

Rec'd payment by note dated March 8th, 1866, four months after date, payable at the banking-house of Henry Greenbaum & Co., Chicago, Ills.

H. SCHLESINGER & CO.

[2 cent inter. rev. stamp, cancelled.]
H. T. & Co., 1866.

United States Circut Court for the western district of Illinois, in chancery.

581 *Aff't Raphael Peixotto.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER.

U. STATES OF AMERICA, *State of New York, ss:*

Raphael Peixotto, of the city of New York, being duly sworn, says that he is one of the firm of Geo. A. Davis & Co., wholesale clothiers, No. 394 Broadway, in the city of New York; that on the 9th day of March, A. D. 1866, deponent for said firm sold to said Levinson a bill of goods amounting to seventeen hundred and thirty-eight 75-100 dollars, as per original bill of said goods hereto annexed, and marked A; said goods were sold to said Levinson at our usual

rates and prices, and were, at the time of said sale, worth the price for which they were sold, and that they continued to be of the same value until the 10th day of April, A. D. 1866; that they were sold to said Levinson as a first-class customer, he having purchased
582 goods from our house before, and having paid promptly for the same; and deponent further says, said goods were shipped to Chicago to said Levinson immediately after they were so sold, and that they are the same goods for which a judgment has been recovered in favor of said firm against said Levinson, in the Circuit Court of the U. States for the northern of Illinois; and further saith not.

RAPHAEL PEIXOTTO.

Sworn to before me this 11th May, 1866.

R. E. STILWELL,
*U. S. Com'r.*

THE UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting; and I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

583 In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court, this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the nintieth.

[SEAL.] KENNETH S. WHITE, *Clerk.*

[5 cent in. rev. stamp cancelled.]
K. G. W.

NEW YORK, *March 9th*, 1866.

MR. J. D. Levinson, Chicago, Ill's:

Bought of Geo. A. Davis & Co., wholesale clothiers, 394 Broadway: George W. Davis, Aphael Peixotto, Phillip Strans.

| | | | | |
|---|---|---|---|---|
| 2,143 and 4 | 12 | cassimere pants and vests, 14 | 168 | |
| 1,936 | 12 | flannel sacks, $9 50 | 114 | |
| 1,976 | 12 | duck sacks, 3 50 | 42 | |
| 2,003 | 12 | linen dusters, 3 25 | 39 | |
| 1,896 | 6 | black clo. vests, 4 75 | 28 | 50 |
| 1,880 | 12 | " beav. " , 5 60 | 60 | |
| 1,883 and 4 | 5 | blue beav. pants and vests, 16 | 80 | |
| 1,914 and 1,899 | 12 | cassimere pants and vests, 7 75 | 83 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1,855 and 1,865 | and 696 | res'd cassim p'ts, 36 50 | | | 219 | |
| 2,129 and 30 | 12 | cass. pants and vests, 14 | | | 168 | |
| 1,847 and 8 | 12 | " " , 14 | | | 168 | |
| 2,108 and 9 | 12 | " " , 14 | | | 168 | |
| 2,031 | 12 | Marsail. vests, 2 75 | | | 33 | |
| 584 1,967 | 12 | " , $3 12½ | | | 37 | 50 |
| 1,726 | 6 | silk vests, 6 | | | 36 | |
| 1,873 | 6 | " , 5 | | | 30 | |
| 2,181 | 6 | casse. coats, 15 | | | 90 | |
| 2,159 and 60 | 12 | cass. pants and vest, 13 50 | | | 162 | |
| Case stap and etge | | | | | 2 | 75 |
| | | | | | $1,738 | 75 |

Received note, mat'g c., 4 Nov'r, on settlement.

GEO. A. DAVIS & CO.
J. W. B.

United States Circuit Court for the northern district of Illinois.

*Aff't Charles B. Churchill.*

CHARLES B. CHURCHILL *et al.*
*vs.*
JOHN D. LEVINSON and ISAAC KEMPNER, } In chancery.

U. S. OF AMERICA, *State of New York, ss:*

Charles B. Churchill, of the city of New York, being duly sworn, says that he is one of the firm of C. B. Churchill & Co., dealers in cloths, cassimeres, vestings, and tailors' trimmings, at Nos. 126 and
585 128, Chamber street, New York city; that on the 8th day of March last said firm of C. B. Churchill & Co. sold to one John D. Levinson, of the city of Chicago, a bill of goods amounting to the sum of eleven hundred and forty eight 00-00 dollars, and four mos. time; that the said goods were sold at the usual rates and prices of said firm, and here worth the amount for which they were sold; that between the 8th day of March, 1866, and the 10th day of April, of same year, they may have decreased in value not to exceed the sum of ten per cent.; that the original bill of said goods is hereto attached, and marked Exhibit A, and it is the same bill of goods for which a judgment has been recovered in favor of said firm of C. B. Churchill & Co. in U. S. Circuit Court for the northern district of Illinois; and further saith not.

CHAS. B. CHURCHILL.

Sworn to before me this 11th May, 1866.

R. E. STILWELL,
*U. S. Com'r.*

UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the
586 United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting; and I do further certify, that he was at the time of signing the same a United States commissioner duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5 cent in. rev. stamp, cancelled.]
K. G. W. May 16, 1866.

587 NEW YORK, *March 8th*, 1866.

Mr. Jno. D. Levinson:

Bought of C. B. Churchill & Co., dealers in cloths, cassimeres, vestings, and tailor's trimmings, 126 & 128 Chambers street. Charles B. Churchill, Leonard K. Smith.

Terms, 4 mos., or 5 off 30 days.

| | | | | |
|---|---|---|---|---|
| 145 147 | 2 | piece $\frac{6}{4}$ coating, $\frac{6\frac{3}{4}}{10}$=16$\frac{3}{4}$ yds., 6 00 | | 100 50 |
| 37,000 | 1 | b'lk triell cloth, 27$\frac{1}{2}$ fr. 27$\frac{1}{4}$, 7 00 | | 190 75 |
| 1 | 1 | fancy cassimere, 10$\frac{3}{4}$, 2 27 | | 24 19 |
| 7$\frac{1}{2}$ | 1 | " " , 8, 2 00 | | 16 00 |
| 13 | 1 | " " , 20$\frac{1}{4}$, 2 25 | | 45 56 |
| | 2 | London finish Silesia, $\frac{54\frac{3}{4}}{45}$ 99$\frac{3}{4}$ 37$\frac{1}{2}$ | | 37 46 |
| 10 | 1 | brown Holland. 44$\frac{1}{2}$, 42$\frac{1}{2}$ | | 18 91 |
| DL | 1 | crown canvass, 35$\frac{1}{2}$ 52$\frac{1}{2}$ | | 18 64 |
| 1 | 1 | elastic duck, 37, 45 | | 16 65 |
| 105 | 1 | white, 57, 1 50 | | 85 50 |
| 410 | 1 | blk. Italian cloth, 42 1 62$\frac{1}{2}$ | | 68 25 |
| | 1 | lb. ball twist | | 16 00 |
| | 4 | sewing silk, 13 00 | | 52 00 |
| 874 | 1 | ps. $\frac{6}{4}$ fancy cassimere, 10 yds., 7 00 | | 70 00 |
| 4,816 | 1 | ps. black silk velvet, 32$\frac{7}{8}$ Aus.=41$\frac{1}{8}$ yds., 8 25 | | 339 28 |
| 71 | 1 | fancy cassimere, 21$\frac{3}{4}$ fr. 21$\frac{1}{2}$, 2 25 | | 48 38 |
| | | | | $1,148 01 |

[2-cent int. rev. stamp, cancelled.]
C. B. & Co., Mch. 8, '66.

Rec'd note March 8. 4 mos. In settlement of the above.
C. B. CHURCHILL. & CO.

E. A.

R. E. S., *U. S. Com'r.*

588 *Maurice Cooney's aff'd't.*

C. B. CHURCHILL *et al.*
*vs.*
JNO. D. LEVINSON *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

The affiant, Maurice Cooney, says he is and has been for fifteen years a tailor; that for eight or nine months prior to 8th of April, 1866, he was employed as cutter for Jno. D. Levinson, at No. 35 S. Clark st., Chicago; that he knew the goods that Levinson had on hand before he went to New York, in March last, to make purchases; that they were as good as the goods usually found in such establishments; that this is true of the piece goods and the clothing on hands; that the def't, Isaac Kempner, was frequently at the store of Levinson, and seemed to be intimate with Levinson; that after Levinson returned from New York, this spring, he saw Kempner at the store of, and talking with, Levinson; that during the first week in April last, he, this affiant, was at Levinson's store every day, engaged as cutter; that during that time he heard nothing of a contemplated sale of the goods or stock on hands; that on Saturday evening he was paid
589 his week's wages as usual, and that then nothing was said about a sale; that on Monday morning, the 9th of April, he went to the house to ply his vocation as cutter, when and where he found everything in the house piled up in a confused state, and was then and there, for the first time, told that Levinson had sold out to Kempner, and that he, Kempner was then in the act of moving the goods and stock; that he reached the store that morning about 8 o'clock in the morning, and that in an hour and a half from that time all the goods had been removed from the house by Kempner.

MAURICE COONEY.

Subscribed and sworn to before me, by Maurice Cooney, May 22d, A. D. 1866.

[SEAL.]

SIMEON W. KING,
*U. S. Commissioner for the Northern District of the State of Illinois.*

590 *Additional testimony on behalf of def't.—Dep. of Isaac Kempner.*

The following additional testimony of Isaac Kempner was taken and read for the defendants, on the hearing, to wit:

CHURCHILL *et al.*
*v.*
KEMPNER *et al.*

Isaac Kempner, called in behalf of the defendant, and being duly sworn by B. W. Burnham, U. S. commissioner, was examined in chief by Mr. Goodwin, and testified as follows:

1 q. Do you know Charles Lansing?

A. I do.

2 q. State whether or not, at the time you took possession of the goods you bought of Mr. Levinson, in No. 35 Clark st., and while you were loading and taking the goods down, and loading them, on the morning of the 9th of April, 1866, you saw Lansing step
591 into that store and hold any conversation with Burke.

A. I did not.

3 q. Did you, while you was there that morning, hear any conversation at the door, or elsewhere, between Burke and Lansing?

A. I did not; did not see Mr. Lansing there at all.

4 q. Who did you come there with that morning?

A. I went there with Mr. Adler.

5 q. About what time in the morning?

A. It might have been eight o'clock, and might have been a little after. I should think it was a little after eight o'clock; between eight and nine.

6 q. Who was there when you got there?

A. Mr. Burke was there.

7 q. Did Adler go in with you?

A. I believe he did.

8 q. Did he stay all the time?

A. He did, with the exception he went away to get some express wagons; stood right on threshold of the door.

9 q. After he went for the express wagons, what did you do?
592 A. We commenced to take the goods out, and piled them on the express wagons.

10 q. Did you take the goods down from the shelves?

A. Burke handed them down to me, and I laid them on the counter, and handed them to the draymen.

11 q. When Adler got back, had any of the goods been put in boxes?

A. No, sir; there was no goods put in boxes at all.

12 q. None of the goods put in boxes that morning at all?

A. No, sir; they were all carried out in armfuls, and piled on the express wagons. With regard to boxes, I would say there was a box of goods packed, that Levinson always kept in boxes, a kind of stale overcoats, very cheap ones. They were packed in a box. That is all the goods packed in boxes. The balance was laying on shelves, the same as you find goods laying in any establishment, and on counters.

593 13 q. But you and Burke didn't put any of the goods in boxes while you were there?

A. No, sir; not that I recollect of.

14 q. Did you, while you was there, hear Burke have any conversation with Lansing, in which anything was said about New York creditors?

A. I did not see Mr. Lansing. I don't think he was there at all.

15 q. Was there any such conversation with anybody—between Burke and anybody?

A. No, sir.

16 q. State whether, on the second day after Mr. Levinson's arrest, or at any other time while Levinson was in charge of Lansing, you and Levinson and Lansing had any conversation in the store, No. 77 Lake st.

A. No, sir. I had no conversation; never saw Mr. Lansing at No. 77 Lake st., never.

17 q. Did you go into that store with Lansing and Levinson at any time while he was under arrest?

A. No, sir; never.

594 18 q. State whether or not, at that store, on the morning of the second day after the arrest, about 10 o'clock, or at any other time, you had a conversation with Mr. Levinson, in Lansing's presence, in which Mr. Lansing said to you, "Well, you may know any way when he went to New York; you shall have the goods when he came back."

A. No, sir; I never had any such conversation with Mr. Lansing nor with Mr. Levinson at any time, neither at 77 nor at any other place.

19 q. State whether or not at any time, in reply to such remark, you told Lansing to "Keep his mouth shut; and he would not lose anything by it."

A. No, sir; I never made no such assertion; in fact I never spoke to Mr. Lansing in regard to that business except once here on Randolph st.

20 q. Did you at No. 77 Lake st., in the store of Mr. Schrimski, have any conversation with Mr. Lansing in which he said—

595 Levinson being present—in which he said, you and Levinson knew each other in California?

A. No, sir.

21 q. Or anything about the bill of sale of the goods that Levinson had given you?

A. No, sir; never had no such conversation at all.

23 q. Did you occupy, or have any business whatever in that store No. 77, on the first floor?

A. No, sir; I had no more business there than you had; Mr. Schrimski occupies the store.

24 q. Did then?

A. Did then; rented it of David Witkowski.

25 q. Was there anything said there between you about a note of Leopold's in Schrimski's store between Lansing and Levinson and you?

A. No, sir.

26 q. Never had any conversation with him in that store about anything?

A. I never had any conversation with Lansing in that store at all; never saw him in that store; never at any time.

596 And I do further certify, that the preceding deposition taken on application of the defendants in a suit now pending in the

Circuit Court of the United States for the northern district of Illinois, wherein Charles B. Churchill, Leonard K. Smith, John Friedlander, Julius Stitch and Leopold Latham are complainants, and John D. Levinson and Isaac Kempner are defendants, was reduced to writing and returned by me without signature, the same being waived; and that I am not of counsel or attorney for either of the parties of said suit, nor am I interested in the event thereof.

March 2d, 1867.

[SEAL.]

S. W. BURNHAM,
*U. S. Com'r Nor. Dist. Illinois.*

597 *Additional testimony behalf defendant.—Deposition of Henry Adler.*

On this day, to wit, March 13th, 1867, was filed in the office of the clerk of said court the deposition of Henry Adler on behalf defendants, in words as follows:

Be it remembered, that on application of John D. Levinson and Isaac Kempner, the defendants in a suit now pending in the Circuit Court of the U. S. for the northern district of Illinois, wherein Charles B. Churchill, Leonard K. Smith, John Friedlander, Julius Stitch and Leopold Latham are complainants, and John D. Levinson and Isaac Kempner are defendants, I, S. W. Burnham, U. S. commissioner in and for the northern district of Illinois, have this second day of March, A. D. 1867, at the office of Goodwin & Larned, in the city of Chicago, and district aforesaid, due notice to the said complainant having been given, proceeded to examine Henry Adler as witness on behalf of the said defendants in the aforesaid suit; and I certify that the reason for taking said deposition is, and the fact is, that the same was taken by consent of the parties to the said suit and their counsel respectively, and I do further certify that the said Goodwin & Larned appeared before me on the said day on behalf of the said defendants, and Messrs. Moore & Caulfield as counsel on behalf of the said complainants; that the said Heny Adler being by me carefully examined, cautioned and duly sworn to testify the whole truth, says:

1 q. What is your name?

A. Henry Adler.

2 q. Where do you live?

598 A. At present at Janesville, Wis.

3 q. About what is your age?

A. 27, going on 28.

4 q. What is your occupation?

A. Merchant.

5 q. Do you know the parties in this case, Isaac Kempner and John D. Levinson?

A. Yes, sir.

6 q. State how long you have been acquainted with either of these parties.

A. I have known Mr. Levinson ever since he came to the city of Chicago; he came in here and bought out the lease of that store on Clark street; I don't know the number.

7 q. 35, is it not?

A. I don't remember; I have lived here 15 years, but I don't remember the number; I have known him ever since he moved to Chicago; I have known Kempner since a few days after he arrived from California; just a few days after he arrived.

8 q. What time was that?

A. It was last spring, if I am not mistaken; I don't know exactly as to the date or to the month even.

9 q. In the fore part of the year 1866, was it?

A. Yes, sir; it was towards the spring or some time.

10 q. Where did you live at that time?

A. In the city.

11 q. Did you know a man in the city of Chicago at the time by the name of Charles Lansing?

599 A. I did, sir.

12 q. How long had you known Lansing?

A. I had known him over a year; over a year and a half; something like that; I mean I have known him by sight; boarded with him over a year at the Sharp Corner restaurant.

13 q. Was you present at the store of Levinson, on Clark street, at the time when the goods were taken by Isaac Kempner from that store on his purchase of Levinson?

A. I was in the store at the time.

14 q. State how you came to go there, and what time of the day it was.

A. It was on Thursday morning. I was at that time living at Witkowsky's house on third avenue, No. 64; Kempner came down to the house and said that he was going down town, (that was between 8 and 9 o'clock in the morning,) and said that he was going down town to remove his stock; myself, David Witkowski, jr. and Mr. Kempner walked down town together, the three of us; we was going down towards the corner of Randolph and Clark, talking, and Kempner said he was going to move his stock of goods that very morning.

15 q. What stock of goods?

A. Levinson's stock of goods.

16 q. That he had bought of Levinson?

A. The stock of goods he said he had bought of Levinson; we walked along and he told me if I had anything to do? I told

600 him I had not; he said, "You would do me a favor if you will help me look on and see that none of the goods will be lost, as I am going to remove them by express wagons." I told him I was not doing anything and would help him; we came down here and took express wagons along; we came to the store and there was two or three express wagons that were engaged; but Mr. Kempner didn't think there was enough express wagons at the time, so I went myself back to the court-house square and got two more express wagons; I came up and brought the express wagons; Kempner was in the store, and

Burke, the clerk of Levinson; Kempner requested me if I would not look out that nobody would steal any goods; I told him I would, and I stood right in the door, or as near to the door right there in the store and looked out at the same time while the express man was carrying the goods on the wagons; I stood there after the express begun to load up, and I was looking out so that nothing should be lost until the goods were all loaded up.

17 q. Did you and Isaac come into the store together?

A. Yes, sir; we went into the store together.

18 q. When you went back for the wagons, where was Isaac?

A. He was in the store.

19 q. How long was you gone?

A. I was gone more than—say not more than five or ten minutes to get the express wagons from the court-house square.

20 q. When you got back had any of the goods been take
601 down?

A. Mr. Burke, the clerk there, was taking the goods down. There was some on the counters, and were beginning to load.

21 q. Where was Burke then?

A. He was behind the counter helping to take down some of the goods off the shelves.

22 q. When you first went there together was the store door open?

A. Yes, sir.

23 q. Was the store perfectly light?

A. The doors were thrown open. When I first came there was only one door open, but they were beginning to remove the goods and the doors were wide open.

24 q. Was any of the goods put on the express wagons when you got back?

A. They were just beginning to load the first wagon when I got there—when I came back.

25 q. How long did it take to finish it?

A. Well, as near as I could say, it was perhaps 30 minutes; I could not exactly say, but about that time. There was no hurry about it as I could see. It took about 30 minutes, perhaps, to load it; from that to 40; I could not exactly state the time.

26 q. What was Isaac doing?

A. He was helping to put the goods on the express wagons, or rather put them on the man that carried them out, so they
602 could not be disturbed, and get them out in good order.

27 q. While you was there did Charles Lansing come into the store?

A. No, sir; he didn't.

28 q. Did you see Lansing at the store door at all?

A. I did not.

29 q. Was Lansing there to have any conversation at all with Burke?

A. I haven't seen the gentleman there at all.

30 q. You was there all the time from the time you and Isaac

went there together, except the 10 minutes you went for the express wagons?

A. Yes, sir; I was there from the beginning of the time when the goods began to be loaded until they were all loaded up.

31 q. Did you see anybody stop at the door, or step into the door, and talk with Burke?

603 A. Nobody, with the exception of the cutter that came in.

32 q. If Lansing had been there and any conversation took place between him and Burke when you were there, you was situated so you could hear it, were you, and so you could see him?

A. I was right in the door, and there was nobody entered with the exception of one man that asked what was going on, and I told him that the stock of goods was moving. That is the only question that was asked me; and that man was not Lansing; and in the store there was nobody but Kempner, and Levinson's clerk, Burke, and the cutter and myself, and the express man that loaded the goods; no other stranger.

*Cross-examination.*

By Mr. Moore:

33 q. When did you first see Lansing?

A. Well, I saw him over a year ago at the Sharp Corner restaurant, where I used to board.

34 q. How long did you board there?

A. I boarded there—well, I boarded there over 8 months; couldn't say exactly; when I came out of the army, I believe it was in

604 July when we got back, and I boarded there from about August until April the following year.

35 q. How often was you there?

A. I was there three times a day for my meals.

36 q. How often was Lansing there?

A. I used to see him there at dinner time, and breakfast, as the rest of the boarders.

37 q. Did you have any other acquaintance with him than simply seeing him there at the restaurant?

A. Only as boarders we used to speak together; that is all.

38 q. That is about all the acquaintance you had with him?

A. That is about all the acquaintance I had with him; used to speak together.

39 q. You knew him by name?

A. I knew him by name.

40 q. And had frequent conversations with him.

A. Yes, sir.

41 q. When you went down with Kempner to No. 35 that morning what time did you say it was?

A. Between 8 and 9 o'clock.

42 q. How long did you say you think they were in loading up the goods?

605 A. From 30 to 40 minutes; something like that.

43 q. How many wagons were there [there] when you got there?

A. When I first got there?

44 q. Yes, sir.

A. Three wagons.

45 q. Where did you go to for other wagons?

A. To the court-house square, opposite the Sherman House.

46 q. That is how far from No. 35?

A. Well, it is about a block.

47 q. A little over a block where you went to, is it not?

A. No, sir; it is hardly a block, because No. 35 is in the block, and this was opposite the Sherman House, where the hat stand is.

48 q. You had to go on the opposite side of Randolph street?

A. I had to go opposite the court-house.

49 q. There you engaged how many wagons?

A. Two wagons.

50 q. Express wagons?

A. Yes, sir.

51 q. And then you went back?

A. Yes, sir.

52 q. You don't know anything about who was there while
606 you were absent?

A. No, sir; I don't know who was there while I was absent. When I came back Kempner and Mr. Burke were there.

53 q. Engaged in taking down the goods, were they?

A. Yes, sir.

54 q. Where did you say you lived now?

A. Janesville, Wis.

55 q. You came down here to give your testimony, did you?

A. Yes, sir; I was sent for.

56 q. To give your testimony in this case?

A. Yes, sir.

57 q. Who have you seen and talked with about it?

A. About the case?

58 q. Yes, sir.

A. To nobody until I came up here this morning to Mr. Goodwin's.

59 q. Have you had any conversation with Mr. Kempner about it?

A. I saw Mr. Kempner when I came. I arrived here Friday night and saw him Saturday, about 11 o'clock.

60 q. And talked over the matter with him?

A. No, sir; only he told me he wanted me to give my testi-
607 mony in the case; that is all the talk. I have not seen him from Saturday noon until this morning.

61 q. Did he tell you on what points he wanted your testimony?

A. He told me on the point I am giving my testimony here, that he wanted my testimony on that point.

62 q. Where was you when he told you that; I mean whereabouts in Chicago?

A. Where he told me was on the corner of Randolph and Wells street.

63 q. Have you had any conversation with Mr. Witkowsky at all?
A. David Witkowsky?
64 q. Yes.
A. No, sir; only when I arrived he told me that Mr. Kempner wanted my testimony, that is all.
65 q. Did he tell you what it was about?
A. Yes, he told me it was about the case, but didn't know the particulars of the testimony.
66 q. Didn't know the points on which it was?
A. No, sir.
67 q. Which Witkowsky was it?
A. David Witkowsky, jr.
68 q. You have not seen any other Witkowsky?
608 A. I have seen a great many of the family, but I have not spoken to any of them on the point.
69 q. Had no conversation with any of them?
A. No, sir.
70 q. What business are you engaged in now at Janesville?
A. I am a merchant there in the clothing business.

*Direct examination resumed.*

By Mr. Goodwin:

71 q. When you came back after going after the express wagons had any goods been put in boxes?
A. Well, I don't know; I couldn't say that for certain, because it was only such a short time I didn't pay any attention whether there was any they put in boxes at that time.
72 q. None of them had been put on the wagons at that time?
A. The first wagon was beginning to load when I came with the two express men.

H. ADLER.

Subscribed and sworn to before me, this 4th day of March, A. D. 1867.

[SEAL.] S. W. BURNHAM,
*U. S. Com'r Nor. Dist. of Ill.*

609 *Certificate of commissioner.*

And I do further certify, that the preceding deposition taken on application of the defendants in a suit now pending in the Circuit Court of the United States for the northern district of Illinois, wherein Charles B. Churchill, Leonard K. Smith, John Friedlander, Julius Stitch, and Leopold Latham, are complainants, and John D. Levinson and Isaac Kempner are defendants, was reduced to writing by me and signed by the said Henry Adler, in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and seal, this 4th day of March, A. D. 1867.

[SEAL.] S. W. BURNHAM,
*U. S. Com'r Nor. Dist. Ill.*

Endorsed: Filed March 13, 1867. Wm. H. Bradley, cl'k.

610 *Stipulation as to extension of time to file transcript in Supreme Court.*

On this day, to wit, the fourth day of December, A. D. 1867, the parties hereto filed in the office of the clerk of said court the stipulation extending time in which to file the transcript in this case in the Supreme Court of the United States, which stipulation is in werds and figures following, to wit:

Supr. Court U. S.

CHARLES B. CHURCHILL *et al.*, appellee,
*vs.*
ISAAC KEMPNER *et al.*, appellant.

The time for the clerk's return of the record in this case is extended twenty days, and the same to be filed with the same force and effect as if made within the first six days of the term.

Dec. 4, 1867.

MOORE & CAULFIELD,
*For Compl'ts.*
GOODWIN & LARNED.

Endorsed: Filed Dec'r 4th, 1865. Wm. H. Bradley, cl'k.

611 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the Circuit Court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript to be a true and correct copy from the record of all the proceedings had in said court in said cause, wherein Charles B. Churchill *et al.* are the complainants, and John D. Levinson *et al.* are the defendants, (embracing pages from one to six hundred and ten inclusive,) as the original of the same now remain in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said northern district, this thirtieth day of November, A. D. 1867.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-cents rev. stamp.]

Aurora 16

# Supreme Court of the United States.

## ISAAC KEMPNER,

Appellant.

VS.

## CHARLES B. CHURCHILL, et. al.,

Appellees.

# BRIEF AND POINTS FOR APPELLANT,

BY

## S. A. GOODWIN.

CHICAGO:

OAKLEY & SON, LAW PRINTERS, 45 MCCORMICK'S BUILDING,

1869.

# Supreme Court of the United States.

ISSAC KEMPNER, imp'd with JOHN D. LEVINSON, APPELLANT.

*vs.*

CHARLES B. CHURHILL and others, APPELLEES.

## BRIEF AND POINTS FOR APPELLANT.

This Case comes up on appeal from a Decree in Equity, in the Circuit Court of the United States, for the Northern District of Illinois.

The Bill was filed on the 17th day of April, 1866, by the complainants, as creditors of John D. Levinson, against Isaac Kempner, to set aside as fraudulent, as to creditors, a bill of sale of a stock of goods, consisting of cloths, clothing and furnishing goods, by Kempner, purchased of John D. Levinson, at Chicago, and paid for in cash, April 9, 1866, at the sum of $9,725.95. Levinson was also made a party defendant, and the defendant's oath to the answers was expressly waived by the bill, pursuant to the statute of Illinois, adopted by the Circuit Court as a rule of practice. An injunction was issued

on the bill and the goods held under it. Kempner appeared by counsel and answered, denying all the allegations of the bill, May 5, 1866. An answer was also filed by Levinson *in person*, May 23, 1866.

On the 11th of June, 1867, upon a hearing, a decree was entered, setting aside the sale to Kempner, appointing a receiver, ordering a sale of the goods to satisfy complainant's judgements. From this decree, said Kempner appeals, and in his behalf we submit the following points and argument, referring specially to the Record.

## I.

The defendant, Kempner, was a *bona fide* purchaser for cash in open market, without notice of any intended fraud (if such existed), by Levinson the vendor. To maintain the complainant's case, they must establish affirmatively, that the sale was fraudulently intended by Levinson, and as a fact, (in the language of the allegation in the bill), "that the said Isaac "Kempner contrived and conspired with the said Levinson to "cheat and defraud said creditors, [by] having such sale so "made, as aforesaid, with the design and purpose of keeping "said goods, wares and merchandise, beyond the reach of ex- "ecution or process of law; and that such sale was in fact "made for such purpose to hinder and delay creditors."

This is in accordance with the adjudged cases, under 13th of Elizabeth, Chap. 5, which is the basis of our statutes, and of the relief sought.

Ewing *vs.* Runkle, 20 Ill., 448.
Hessing *vs.* McClosky, 37 Ill., 342.
Cadogan *vs.* Kennett, 2 Cowper, 434.
United States *vs.* Hove, 3 Cranch, 88.
Clements *vs.* Moore, 6 Wallace, 299.

The facts in this case, instead of sustaining this allegation, most strongly rebut it.

1. As preliminary, we call the attention of the court to the circumstances, under which the complainants came into this court with this fraudulent allegation, and we charge *that the complainant's bill is filed in collusion and conspiracy with Levinson, to defraud his vendee, while he is permitted to go free, with the money paid him in his pocket.*

The sale to Kempner was made on the 9th day of April, 1866, for $9,725.95, cash down. On the 10th Levinson was arrested on the affidavit of Rosenthal, brother-in-law to Stich of the house of Freidlander & Co., in New York, complainants. On the 11th Freidlander came to Chicago. He staid until Saturday evening the 14th. While here he discharged the warrant of arrest of Levinson. He employed Wilson & Asay, Levinson's previously retained counsel, to collect his debt out of the goods sold to Kempner. On the 16th, (Sunday intervening) Levinson confessed judgment to the complainants and Ch. Beardslee. On the 17th he confessed judgments to seven other of the creditors, now complainants, and on the same 17th April this bill was filed as a creditor's bill, on executions returned unsatisfied as against Levinson. Not one of these demands was due at the time under three months, except Freidlander's, which rested in open account, uncalled for, and not prosecuted. Those judgments were confessed in the office of Wilson & Asay, Levinson's Attorneys, and subsequently counsel for the complainants in this suit. The bill was filed by Hoyne & Horton, and expressly waived an answer on oath. No attempt was made to put Levinson to the question. Besides the cash, $9,725.95, on the sale, he had received on the 11th $500 of Lawkin for his fixtures; $500 had been received for goods just before the sale to Kempner, and he had furniture in his house which cost him $3,500, and was worth full $2,500. No *ne exeat* or receiver was asked against

him, and no *oath* required of him. But on the 18th of May next, just one month after this, the complainants called Levinson as a witness against Kempner without even enquiring about this money and property notoriously in his possession at the time of filing the bill. Then on the 23d of May an admission answer was drawn for Levinson in person, in the office *of the Solicitor for the complainants.* They pushed their proceedings to a decree against Kempner by the aid of Levinson while he was permitted to escape question or prosecution.

On these facts we submit that we are justified in the above charge, that the bill has been filed collusively with Levinson and to defraud his Vendee.

2. The above allegations of the bill are fully denied by Kempner, and the facts and circumstances proved support his answer.

Levinson has been examined as a witness, and in addition, they have called Berk the clerk, Cooney the cutter, Lansing the constable, and Asay & Wilson the lawyers. They fail to show, either by Levinson or any other witness, that Levinson himself had any fraudulent intent upon his creditors in making this sale. He does not say so, although a witness. Nor does he say that there was any such plan or contrivance between himself and Kempner. On the contrary he swears, (and other witnesses show that he so declared at the time) that his sole object was to get into other and more pleasant and lucrative business.

They do not show that Levinson was insolvent at the time of the sale. He was on the stand as their witness, and did not, because he could not, so swear. Nor did they show that the consideration was inadequate. No suit was pending against Levinson at the time. He owed not quite $15,000, of which, about $3,000 only, was due on call, and the remainder had three and four months to run. Only *seven* business days

had elapsed after the sale, when the bill was filed, and no proof was offered that he had been required or had refused to apply the money received on his debts, or that he ever had, or expressed any intention not to do so. On the contrary, the only proof was, that on the day of sale, after he got the money, he said to David Witkowsky, Sr., that he was going at once to New York, to settle with his creditors.

3. The *bona fides* of the purchase by Kempner, is affirmatively established by an overwhelming weight of testimony, corroborated by all the surrounding facts.

A. It appears that Levinson's whole indebtedness on the 9th of April, 1866, was $14,426.00, partly due as above stated. On that day Kempner bought out his whole stock at 55 per cent. upon the cost invoice and paid him $9,725.95 cash. He had $500 of sales made after 20th March. On the 11th April he received $500 of Lawkin for fixtures. He had furniture costing $3,500, and worth ([redacted]) $2,500.00, making a total of $13,225.95. The complainants did not allege nor show, nor did Levinson, as a witness, pretend that he had not notes, claims and choses in action, or other monies, to meet the balance of $1,100 in full. But we *did* show that he had received $20,000 but a short time before by his own statement, from his wife. We have a right therefore to infer that he had enough of this, to cancel his debts in full, especially, as the complainant did not *attempt* to show even *prima facie* that by this sale, at the amount given, Levinson was deprived of the means of paying his debts in full, or that he had not sufficient to do this with the money Kempner paid him, and his other property; or in other words, that he was bankrupt. It is incumbent on them to show this affirmatively before they *can* charge that the sale, by possibility, *could* be fraudulent.

Nor do the complainants show anywhere in the case, that Levinson has not now, and always had, money enough to pay these creditors all he owes. The answer which the complainant's Solicitors drew for him does not *deny* that he has such money. And we happen to know that within the ten days previous to the filing of the bill he had the above sum of $13,325.95, and that the complainants took no steps to reach it.

B. The testimony of Kempner, corroborated by his witnesses, shows, that he made this purchase in the fair course of trade for a good consideration paid in cash, and without any notice or cause to suspect any intended injury to creditors thereby.

He could not know of a fraudulent purpose which Levinson did not entertain, so far as shown, for he, (Levinson) substantialy negatives that. In the absence of that main necessary fact, the complainants have attempted to prove some remarks, which, if substantiated, they seem to suppose would show Kempner cognizant of some wrong intention. In regard to these, we have to say, that they are each and all trifling and unsatisfactory for the conclusion, and every one of them denied by Kempner, and disproved by his witnesses.

For instance, as to the showing of the bills, or speaking of the amount due Freidlander, or others as creditors, at the time of taking the inventory, it stands on Levinson's testimony alone, and is disproved by Kempner, David Adams and David Witkowsky, Jr.

So of the alleged remark of Kempner, at the same time sworn to by Levinson and Berk, that "little Coleman would have to suffer," it is expressly contradicted by Kempner and David Adams; and David Witkowsky, Jr., says, he should have heard and remembered it, if made. Besides, if considered proved, it would in no respect indicate any knowledge or intent that the money

paid would not be applied to satisfy creditors. If the sale was honest and fair, and for a fair price, as we say it was, it could make no difference that the creditors might not be paid in full Purchases are often made of the stocks of insolvents, and rightly and honestly, although such consequences necessarily ensue.

So, also, of the remark sworn to by Levinson alone: "you had better let me have the goods and put the money in your pocket, and let the creditors go to the devil." Kempner contradicts it flatly, and Levinson does not pretend that *he* had any such purpose, or acted upon any such suggestion or advice in making the sale.

Levinson is also contradicted by Kempner, David Witkowsky, Sr., and Solomon Witkowsky, as to the receipt for the whole amount on the bill, instead of fifty-five per cent.; and these three witnesses show that Berk was not present when the receipt was given. And Berk besides being contradicted, is substantially impeached by David Witkowsky, Sen. and Adolph Asher.

Then Lansing is made to swear that Berk remarked to him, the morning the goods were delivered, "the creditors will get a smack," while Kempner was in the store. But it turned out that Lansing was just inside the door and Kempner in the rear of the store, thirty-five feet distant, engaged with the goods, and his back to the door, entirely out of hearing of any such conversation. And Berk does not state such a fact in his testimony. This witness, Lansing, is contradicted by Kempner and Friend, and is of little account.

C. The testimony of Liberman, Adler, D. Witkowsky, Sr., and Kempner, all show (and Levinson admits), that he had offered this stock in the market, and pressed it on Kempner, instead of Kempner instigating or pressing the sale to him, as pretended by the complainant.

D. The testimony of D. Witkowsky, Sen., David Adams, Henry Adler, D. Witkowsky, Jr., James Marks, Conrad Witkowsky and Isaac Kempner, on the part of the defendant, and A. D. Titsworth for complainant, show an adequate consideration paid by Kempner for these goods, for the purposes of trade and re-selling; and all they were worth for a fair bargain. This evidence, together with that of Henock, Kohn, Kuh, Bowen, Woodhull, Crumbaugh, Marks and Witkowsky, (page 220 to 225), show a falling market, and a decrease of from twenty to thirty per cent. in value of this class of goods between the new spring purchases by Levinson, and this sale. It also appears that the amount on hand at original cost was near $18,000, and the new purchases about $11,000; and that the residue consisted of a former stock, in part of remnants, &c., and purchases from August, 1865, at a high market, so that the average value of these goods, was reduced some fifty per cent. in the market, in the opinion of all the defendant's witnesses, (seven or eight in number), and to seventy-five per cent. in the opinion of Titsworth, the complainant's witness, who says some of them were not worth ten cents on the dollar. On this point there is a difference of opinion, but the preponderance is with the defendant. Any inadequacy of consideration is thus exploded, either as a badge of fraud *per se*, or as a motive for a fraudulent collusion with Levinson. There was not bargain enough in it for such a motive. Kempner's purpose of going into trade, was a legitimate one. The right to sell was perfect in Levinson, either at wholesale or retail. The right to buy, and make a fair, and if your honors please, a good bargain, cannot be denied to a purchaser, there being no fraudulent conspiracy between vendor and vendee, as there is none proved here. The debts of Levinson, considered as to him, were not due.

The bill asserts this distinctly. No suit had been commenced, or even threatened. It was therefore impossible that the intent should exist, or be known to or suspected by Kempner,

to place these goods beyond the reach of an execution in behalf of these creditors, as alleged in the bill. The goods were in Levinson's hands for sale, with the consent and allowance of these creditors. They had no lien on them fixed or incohate. Nor had they inaugurated any proceedings to mature a lien. The full price paid, put Levinson in funds to pay his creditors, and he stated that to be his intention to David Witkowsky, Senior.

In this connection the language of the Supreme Court of Illinois in *Wadhams vs. Humphrey*, (22 Ill., 663) is instructive.

"We are not aware of any rule of law requiring a debtor to hold on to his personal or real estate until a creditor can sue him and obtain judgment and execution. Such a law would be productive of disastrous effects by fettering the free transfer of property from one to another. No matter how much a man may be indebted, he may sell his property for a fair price, *or even for a price below the market value*, if done honestly and with no view to delay, hinder, or defraud creditors of their just dues. A debtor may sell his property for a fair price, even if he sells it with the avowed intention of defeating an honest claim, if no lien exists to forbid it."

And again in *Hessing vs. McClosky*, (37 Ill., 342) cited *supra*, the same court say:

"A party, though in debt, may sell his property to any one he pleases for an honest and fair consideration if no lien exists to forbid it. If the transaction be an honest one, made in good faith, and for an adequate consideration, it matters not how many creditors may be prevented from reaching the property."

E. There is no fact or circumstance connected with the sale that is not reconcilable with an honest purpose.

Nor do the complainants show anywhere in the case, that Levinson has not now, and always had, money enough to pay these creditors all he owes. The answer which the complainant's Solicitors drew for him does not *deny* that he has such money. And we happen to know that within the ten days previous to the filing of the bill he had the above sum of $13,325.95, and that the complainants took no steps to reach it.

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E. There is no fact or circumstance connected with the sale that is not reconcilable with an honest purpose.

It was reasonable prudence for Kempner to remove the goods at once into his own possession, after the inventory was made on which he was to pay, for safe keeping, and to avoid the high rent of Levinson's store, as they were to be paid for only on possession, and to be taken out of town to sell. He had no right to keep them a day in that store.

Prompt possession has never before been urged as a badge of fraud. On the contrary, possession left with the vendor has always been considered ground of suspicion. It is idle to say that the possession was in haste to avoid seizure by creditors. There was not only no such thing threatened, but not one of Levinson's creditors was in a position, legally, to touch these goods by Attachment, Replevin, Execution, or other process. If they had been the goods could be reached as well at No. 77 Lake Street, as at 34 Clark Street, and all knew that.

It is said that the inventory was made, and the trade completed on Sunday! These parties were all Jews and with them Sunday is always a secular and convenient day for any extra work.

The bill also alleges that the receipt before referred to on the invoice of goods sold, was taken for the whole sum fraudulently. We have disproved the allegation and shown that Levinson casually so drew it, and did not alter it, although requested by Kempner and D. Witkowsky, Sr., because, as he, L. said it was of no consequence. There was nothing about it for Kempner to conceal. All the parties connected with the sale well knew the amount Kempner was to give. It was openly and notoriously known and talked about by near a dozen witnesses. How then could Kempner expect to keep it a secret by the form of the receipt? It is simply absurd.

On the point which we make in this subdivision, the rule of common sense is that well established by the Courts.

"When the circumstances adduced to show fraud admit of a natural and probable explanation, consistently with the innocence and good faith of the party charged with the fraud, the presumption is in favor of innocence."

Garrow *vs.* Davis, 1st Cir. (Me.) 1851.
10 N. Y. Leg. Obs. 225.

It has become a maxim as given in *Norton vs. Kearney*, (10 Wisconsin R.) 481.

"Odiosa et inhonesta, non sunt in lege presumenda, et in facto quod habet in se, et bonum et malum, magis de bono, quam de malo, presumendum est."

So in *Townsend vs. Stearns*, (32 N. Y., 209, 214) Porter, J., in delivering the judgment of the Court of Appeals, said:

"Deeply as the law abhors fraud and crime, it equally abhors the imputation of either, except upon clear and controlling evidence. When words written or spoken are relied on as the sole evidence of guilt, it is not enough that they admit of a construction consistent with the imputed wrong, unless they are also inconsistent with a lawful act of honest purpose. And the onus is therefore upon the creditor who assails the assignment (or sale) to *show*," &c.

Now we fearlessly assert that there is not an act or declaration of Isaac Kempner satisfactorily established in this case, that is not consistent with an honest intent as a business man purchasing in market overt, merchandise rightfully on sale, and for legitimate business purposes.

## II.

There is here, no such inadequacy of price as to raise a presumption of fraud. So far from the price paid being so inadequate as "to shock the moral sense," as it must be to warrant that presumption, it was really full and adequate under the circumstances, as we have shown above. The rule is well settled.

Osgood *vs.* Franklin, 2 J. C. R. 1.
Hill on Trustees, 226 top, 152 *m*, and note 1
Adam's Equity, 247 top, and note 1, 79 *m*.
Follett *vs.* Rose, 3 McLean, 332.

In the last case, the court held, that "unless the inadequacy of consideration, be so gross, as to strike every one with a presumption of fraud, it is not evidence of unfairness."

## III.

The answer of Levinson is no evidence in this case as against Kempner, as a pleading or admission. An answer on oath was waived by the bill, under the statute of Illinois, in which case the answer is not evidence in the case, (Gross' Statute of Illinois, 92, § 22.) It was sworn to as an affidavit on the injunction motion.

The answer of one defendant cannot be read against his co-defendant in any cases except those of partnership, or joint interest.

Christie *vs.* Bishop, 1 Barb. Ch. R. 105.
Clark's Exrs. *vs.* Van Riemsdyk, 9 Cranch, 156.
Pritchard *vs.* Draper, 1 Russ. and Mylne, 200.

More especially cannot such answer be used as an admission by Levinson as against Kempner.

"A party who has parted with his right or interest in property, or a chose in action by an absolute sale or assignment to another person, cannot by his subsequent admission affect the right of the purchaser. And the fact that such admission is made upon the oath of the former owner, does not alter the principle where such oath is made *ex parte*, and without any opportunity for the party against whom it is to be used, to cross-examine the person making such admission."

Per Wallworth, C. in Christie *vs.* Bishop, *supra.*

And this Court in *Clement vs. Moore*, (6 Wallace, 299, *supra*) settled that:

"Statements either oral or written made by the Vendor after such a sale, are incompetent evidence against the purchaser on a suit by the particular creditor to set the sale aside."

Before this answer was made and filed, Levinson had been sworn as a witness. His testimony stands in the case for what it is worth. We submit that *that* is very little, situated as he is, *doubly* interested to pay his debts with property which he once sold, while he keeps the ten thousand dollars consideration money in his pocket; and (so far as he shall be deemed to

throw any doubt upon the fairness of his sale) proclaiming his own turpitude and infamy. But that testimony cannot be supplemented by any subsequent admissions wrung from him *ex parte* in the office of the complainant's solicitor, and called an answer.

## IV.

The testimony given by Wilson & Asay, (although of no great importance) should be excluded. It is contrary to the policy of the law that they should be permitted to testify to what passed between either of them and Kempner while connected with Kempner's case, and acting as he supposed as his legal adviser. Not only does Kempner's testimony show that this was the fact, but Wilson & Asay and their clerk, Lawrence, show the same thing.

While Kempner most emphatically denies Asay's story, that he (K.) said he had advised Levinson to break with his pockets full, and Levinson does not corroborate it, or pretend that he took such advice, or ever thought of doing so, yet we object as we did below, for Kempner, that the circumstances rendered it indecorous and highly improper that these gentlemen should be witnesses in the case.

1, Greenl. Ev. § 239 and note.
Smith *vs.* Fell. 2 Curties, (3 Eccl.) 667.
Foster *vs.* Hall, 12 Pick., 97.
B'k of Utica *vs.* Mersereau, 3 Barb. Ch. R. 534.

Besides, the whole testimony of Asay, so far as offered to contradict Kempner, was improper, on the further ground that it was offered to contradict his answers, drawn out on complain-

ant's cross examination of Kempner upon collateral facts, and such answers were conclusive upon complainants.

1 Greenl. Ev. § 449.

## V.

In conclusion we confidently maintain, that upon the whole case, there is no such evidence here as can impeach this purchase, and set aside the sale with all the ruinous consequences to the vendee. The purchase and transfer were open and honest. The purpose is shown to have been a future business. The price paid was adequate. It was paid in cash. No intent is shown by Levinson not to pay his creditors. He is not shown to have been insolvent, but we show the contrary. He had not been sued. The greater part of his debts were not due. No lien existed on the goods. Levinson's right to sell was perfect. The complainants filed their bill on the *eighth* day after the sale, without waiting to see if Levinson paid his creditors, and without *demanding* the money paid him. The bill was based on voluntary confessions, made after they had arrested and discharged Levinson. The bill did not seek to compel Levinson to disgorge this, and his other money. It was a concocted plan to get judgements, and use Levinson to subject Kempner's goods to the payment of debts, in consideration of letting him (L.) keep the money. They evidently preferred this, to waiting Levinson's pleasure and option, as they would be compelled to without this bargain; having no judgements, and most of the debts having three months to run. This is the key to the whole transaction.

They have endeavored to support it, not by Levinson's swearing to a fraudulent intent *which he dared not do*, but by loose, equivocal talk, contradicted, and mostly immaterial to

the real issue, by throwing dirt and appealing to a supposed prejudice against Jews, and by uncharitable constructions upon the most common and innocent business acts.

If a *bona fide* sale can be defeated by iniquity like this, it will unsettle all the foundations of trade, as well as all the principles of law hitherto thought a sufficient protection of the rights of purchasers, while it turns the innocent vendee in this case, from this Court a homeless and houseless pauper, plundered of the earnings of a lifetime.

We submit that the decree below should be reversed and the Bill ordered dismissed.

GOODWIN, LARNED & TOWLE,

*Solicitors for Appellant.*

# Supreme Court of the United States.

ISAAC KEMPNER, Appellant,

*vs.*

CHARLES H. CHURCHILL et al., Appellees.

APPELLANT'S REFERENCES TO RECORD,

BY

S. A. GOODWIN.

Gibbs & Wilkinson, Printers, Washington, D. C.

# Supreme Court of the United States.

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**Isaac Kempner, appellant,**

*vs.*

**Charles B. Churchill, et al., appellees.**

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APPELLANT'S REFERENCES TO RECORD.

Sale April 9, 1866. (Rec., p. 22, 178. 179.)

Bill filed April 17, 1866. (Rec., p. 12.) Judgment confessed by Levinson, April 16, 1866, in office of Wilson & Asay. It was after Levinson was released from custody. (Rec., p. 86.) He was arrested on 10th April, 1866. (Rec., pp. 63, 71, 207.) He was discharged by Friedlander, who came there 12th and left 14th. (Rec., pp. 185, 207.)

Kempner knew nothing of, or about, Levinson's creditors. (Kempner, Rec., pp. 179, 183.)

Kempner did not tell Levinson "there is some pretty rough talk in town about you, and you had better not delay the matter. You had better let me have the goods, and let the creditors go to the devil." (Kempner, Rec., p. 184, ques. 53.)

Levinson urged the trade on Kempner, who did not instigate it. (Kempner, Rec., p. 176, ques. 15, 16; Adams, Rec., p. 148, ques. 39, 40; D. Witkowski, Sr., Rec., p. 127; Liberman,

Rec., pp. 215, 216; C. Witkowski, Rec., pp. 111, 112, ques. 4, 5; Adler, Rec., p. 215.)

Nothing was said to Kempner by Levinson, on the morning they took stock, (April 8,) about owing Friedlander, or any other creditor. (Adams, Rec., pp. 149, 150, 151; D. Witkowsi, Jr., Rec., p. 158; Kempner, Rec., pp. 182, 183; ques. 39, 40, 41, 42, 43.)

Levinson said he desired to sell out solely for the purpose of getting into other and pleasanter business. (Levinson, Rec., p. 107, ques. 5; Adams, Rec., p. 148; Kempner, Rec., p. 177, ques. 16; Liberman, Rec., p. 215, affit.)

Kempner denies making the remark to Levinson, "if he had not sold out, or if he had waited till the afternoon, he would have been attached." (Kempner, Rec., p. 198, ques. 183.)

Berk is thoroughly impeached. (D. Witkowski, Sr., Rec., p. 131; Asher, Rec., pp. 216, 217.)

The remark is alleged *after* Levinson's arrest and charges made against him. (Warrant, Rec., p. 207.)

The allegation of the bill, that Kempner said he "wanted it (the receipt) done in this way, so that when the creditors came he could show them that he had paid dollar for dollar at the original cost of the goods," is disproved.

Neither Levinson nor Berk swore this. (Rec., pp. 98, 109,)

It was in fact so done by Levinson at D. Witkowski's office, without the request of Kempner, and as an immaterial matter. (Kempner, Rec., pp. 180, 186; D. Witkowski, Sr., Rec., pp. 128, 129; Sol. Witkowski, Rec., pp. 168, 169.)

Berk was not present. (Same reference.)

The talk about changing it was *after* Levinson's arrest and the trouble. (Rec., p. 197.)

The whole amount of Levinson's goods at time of sale was $17,682 85, at invoice prices. (Rec., p. 31.)

The price paid was their full value (fifty-five cents) as a whole. (C. Witkowski, Rec., pp. 112, 113; D. Witkowski, Sr., Rec., p. 130; Adams, Rec., p. 151; D. Witkowski, Jr., Rec., pp. 158, 159; Kempner, Rec., p. 182; Marks, Rec., pp. 223, 224, affit; C. Witkowski, Rec., p. 225, affit.)

Tittsworth, complainants' sole witness on the point, says some goods of no value, not worth ten cents on the dollar, and he averages the goods at seventy-five cents and no more. (Tittsworth, Rec., pp. 77, 78, and 79.) Such goods declined from Jan to 20 Feb & 1st March 1866. 10 to 50 per cent. (Rec. p. 227, 228, 230, 231, 232, 233, 234.)

There was no concealment as to the price; everybody knew it. (D. Witkowski, Jr., Rec., p. 157; Adams, Rec., p. 147; D. Witkowski, Sr., Rec., p. 127; C. Witkowski, Rec., pp. 111 and 112; Adler, Rec., p. 218.) Levinson complained that it was so reported. (Rec., pp. 107–185.)

Payment and delivery of the goods were to be simultaneous on Monday morning after inventory. (Kempner, Rec., p. 178, ques. 21, and p. 197.)

Sunday was selected for inventory at Levinson's request, so as not to lose a day. The parties are all Jews. (Kempner, Rec., pp. 177, 178.)

Goods were taken to the basement room of No. 77 Lake street, to save rent and for storage. (Kempner, Rec., p. 180; D. Witkowski, Sr., Rec., p. 130.) The front part was a saloon. (Rec., p. 211.)

No intent is shown on the part of Levinson not to pay the consideration money he received to creditors. His testimony contains nothing of the sort. (Levinson, Rec., pp. 106 to 110; D. Witkowski, Sr., Rec., p. 130.)

He told D. Witkowski, Sr., on day of sale, that he meant to pay the money at once to his creditors. (Witkowski, Rec., p. 130.)

The affidavits of the creditors show the whole purchases in fore part of March, $11,450 58. (Rec., pp. 229, 235, 237, 238, 240, 242, 244, 245, 247, 249.) All had three months to run. (Same referee ce)

Of this Levinson had sold $500 at time of sale to Kempner. (Levinson, Rec., p. 109, Int., 9.)

Between the purchases and sale to Kempner, these goods had depreciated 15 to 30 per cent. in market. (Rec., Henock, p. 220; Kohn, 220, 221; Kuh, 221; Bowen, 221, 222; Woodhull, 222; Crumbaugh, 223; Marks, 223, 224.)

With $500 out and 30 per cent. off, the March goods would be worth at time of Kempner's purchase $7,665 41, in the

invoice of $17,682, upon which he gave 55 per cent., new and old, good and worthless. (Rec., as above.)

Levinson does not state himself insolvent. He was not. (Levinson, Rec., p. 106 to 110.)

We show that Kempner paid him $9,725 95. (Rec., pp. 128, 218.) He had $500 of sales. (Rec., 109.) He received $500 at the time for his fixtures. (Lawkin, Rec., 219.) He had furniture, cost $3,500, worth $2,500. (Slossman, Rec., p. 219.) He had received, as he said, $20,000 by his wife. (Kempner, Rec., p. 198.)

The sum total of his New York debts was $14,496 58. (Affidavit of creditors above and bill, Rec., p. 2.)

Complainants waive answer on oath. (Rec., p. 7.)

Complainants made no motion for receiver on Levinson. A month after filing the bill they examined Levinson as a witness, and ask nothing about his money or other property. (Rec., 106–110.)

E. G. Asay was retained as counsel for Levinson on his arrest. (Rec., p. 88.) He received $500. (Rec., pp. 218, 219.) He says he did not at first decline Kempner's retainer positively, but *unless Levinson should consent.* (Rec., p. 89.) Kempner swears he said it *was all right,* and afterwards went back, because it would conflict with Levinson's interests. (Rec., p. 201.) He then accepted complainants' retainer, and drew Levinson's confessions of judgment to them. (Wilson, Rec., p. 86.) The employment was to assist "*in following the goods that*

*had been sold by Levinson to Kempner.*" (Asay, Rec., p. 88.) Wilson and Asay attended the case in court, (Rec., p. 88,) and on examination of Levinson, as their witness, (Rec., p. 110,) and are security for costs. (Rec., p. 1.)

The complainants say, in their affidavits, that Levinson's reputation in New York was that of a responsible, paying, first-class customer, in March, 1866. (Beardslee, Rec., p. 234; Steinhardt, 238; Aronson, 241; Saroni, 243; White, 246; Peixotto, 248.)

GOODWIN, LARNED & TOWLE,
*Solicitors for Appellant.*

# Supreme Court of the United States

No. 226—September Term, 1869.

Charles B. Churchill,
Leonard K. Smith,
Lewis Friedlander,
Lewis Stich and Lepol Lithanor, *Respondants.*
*adsm.*
Isaac Kempnor, *Impleaded* with
John D. Levinson, *Appeltants.*

*In Equity.*

## MR. GILLET'S BRIEF.

A bill was filed by respondants, who were Judgment and execution creditors, to set aside a sale of goods, by Levinson to Kempnor, claimed to have been made in fraud of creditors.

Levinson kept a clothing store in Chicago, and had on hand a stock of goods, when he went to New York and bought over $12.000 worth of new goods at market prices and brought them to his store, the whole stock cost about $17.682.85.

He sold the whole to Kempnor for 55 cents upon the Dollar of their original cost, which amounted to $9.725.56.

The bill was made out at the New York cost prices and receipted at $17.622.85, instead of the amount actually paid, to wit $9.725.56.

Kempnor was enjoined against disposing of the goods without the order of the court.

Other judgment creditors were, under a stipulation and order of the court, subsequently made parties to the bill.

On the evidence, which was voluminous, and somewhat conflicting, the court set aside the sale as fraudulent, as against creditors, appointed a Receivor, directed a sale, and the proceeds to be brought into court and distributed among the creditors who had become parties to the bill.

Levinson made no defence, but answered the bill by admitting its truth.

Kempton alone appealed to this court.

There is really but one question for this tribunal to determine, and this is one of fact:

*Was the sale of the goods by the parties to it with the intention of delaying and hindering the creditors of Levinson in the collection of their debts?*

This fact is abundantly established by the evidence in the record. Seperate and distinct facts, all tending to prove the fraudulent intent, are either admitted or proved, when taken together conclusively show that the sale was made for the purpose of defrauding Levinson's creditors, and if it had not been set aside they would have suffered by it.

FACTS ESTABLISHED BY THE EVIDENCE.

FIRST. *Levinson was a clothing merchant in the city of Chicago at the time of the transaction. and had on hand a stock of clothing of the value of about* $6.000.

*Kempnor's answer*, R p. 20 "That Levinson had been in said business nearly one year: that he commenced with purchasing an old stock.

*Fitsworth's Evidence* R. p. 79 "I estimate the new goods to be not quite one half of the stock in bulk, but perhaps in value nearly one-half."

*B-rk's Evidence* K. p. 98. He was asked what the whole stock of goods cost and answered. "I believe it was over $17.000" R. p. 31. Kempnor's receipted bill is $17.682.85.

*Levinson's answer*, R. p. 32. He gives the amount of new goods as $11.700, which deducted from $17.682.85 would

leave the exact amount of old goods, $5.982.85.

SECOND. *That he went to New York, and about the middle of March* 1866, *purchased, at Market prices, of divers merchants there and forwarded to Chicago a new stock, on a credit of four months, amounting to about* $11.700 *which were incorporated with his former stock in a store occupied by him.*

*Levinson's answer* R. p. 32. The bills of the new purchase amount "in the aggregate to about the sum of $11.700"

*Levinson's Evidence.* R. p. 109. On being asked the amount of stock which he bought in New York in March which he sold to Kempnor, and answered "In the neighborhood of 12.000,"

THIRD. *Kempnor knew that these last purchases by Levinson were made on credit, and that he was dependant upon his stock of goods to make payment therefrom.*

*Levinson's Evidence.* R. p. 107. "He (Kempnor) said to me, there is some pretty rough talk about you, you had better let me have the goods and put the money in your pocket, and let the creditors go to the devil, or words to that effect." p. 108. "Before we took stock, Mr. Kempnor and I had some conversation; he asked me how much I owed Friedlander, Stich & Co., and several other parties. I told him I owed Friedlander, Stick & Co., a little over three-thousand dollars, and named over some other creditors."

FOURTH. *That Kempnor proposed to Levinson to purchase his whole stock on hand at* 55 *cents on the dollar, well knowing that this would not p oduce enough, into several thousand dollars to pay for his last purchases made in March previous.*

*Levinson's Evidence* B. R. p. 107. "He (Kempnor) said he was about leaving Chicago and said he had an idea of going to Omaha to open business and if he could buy a cheap stock of goods he would take them up there"

"The next day he came in and offered me 55 cents on the dollar."

Levinson had told Kempnor what his purchase in March amounted to—about $12.000—the value of the whole goods at 55 cents on the dollar—on $17.682.35, the amount of the bill (p. 31) of the whole would come to only $9.725.85 (Kempnor's Answer p. 16.) Deduct this from $11.700 (p. 32) and it would be $1.975, less than enough to pay for the new goods purchased in New York in the March previous.

FIFTH. *That Kempnor sought to alarm Levinson concerning the consequences that would follow, if he failed to accept his offer of* 55 *cents on the dollar, or omitted a prompt acceptance of it, or did not allow an immediate change of possession of the goods.*

*Levinson's Evidence.* R. p. 107. "He (Kempnor) said to me, there is some pretty rough talk in town about you, you had better not delay this matter, you had better let me have the goods, and put the money in your pocket and let the creditors go to the devil, or words to that effect. "I told him I did not know what I had to fear from the creditors; that I did not owe any one anything that was due except Friedlandor, Stich & Co; that was due. He said you had better look out for them, I know them better than you do."

p. 198. "When we got through taking stock, and we were starting for home, he said, "you had better give me the key of the store so as to show that the goods are in my possession." I gave him the key of the store and told him I must have the money for the goods by twelve o'clock the next day. He said you shall have it as soon as I get the goods moved. On Monday morning I came down to the store about nine oclock, or between nine and ten and the goods were already removed."

*Berk's Evidence.* R. p. 98. "Kempnor made a remark to Mr. Levinson, if he had not sold out, or if he had waited till the afternoon he would have been attached."

*Levinson's Evidence.* R. p. 108. Kempnor said "he would pay for the goods as soon as he had them out of the store," that he did not want to have any trouble with them for fear the creditors might replevin them."

SIXTH. *That the goods were secretly invoiced on Sunday Kempnor taking the key of Levinson's store and rapidly hurried the goods away on Monday morning, to a cellar in a distant building, before they were paid for, instead of being boxed, in the usual way, it being pretended that they were to be sent to Omaha.*

*Levinson's Evidence.* R. p. 198 "We closed the trade on Saturday. I am pretty sure it was Saturday, and he said he would come Sunday and take stock, on Sunday morning he came in with David Witkowsky, jr. and David Adams, I was there with Berk."

He states that when he came to his store between nine and ten next morning, the goods were all removed.

*Berk's Evidence.* R. p. 86 and 47 confirms the above p.97 "I believe the goods were taken to Lake Street, and put into the cellar of Mr. Witkowsky."

SEVENTH. *The goods were invoiced at 45 cents on the dollar above what Kempnor paid, and reciepted that much above what they cost him, to mislead Levinson's creditors and to give the former advantages in his expected legislation with them, concerning his purchase.*

The bill of goods is attached to Kempnor's answer, R. p. 31. and amounts to $17 682.85. Kempnor in his answer (R. p. 16) says he paid for this whole bill only $9. 725.85 cents, which the proof sustains. At p. 18, he states that he bought the goods at 55 cents on the dollar, which is 45 cents less than cost, All the evidence confirms this.

The bill was made out at cost to mislead creditors as is shown by the testimony of Levinson and Berk.

*Berk's Evidence.* R. p. Levinson asked Kempnor how he should receipt the bill and he said "Receipt it in full the way it is."

*Levinson's Evidence.* R. p. 189. "He asked Kempnor how he would have the bill or invoice receipted, Kempnor told him to have it receipted in full, as it was, for the full amount." "He, (Kempnor) said he might want to have that bill of sale changed, to deduct 45 cents and put the amount he paid me." "I told him it could be easily done and he had better see a lawyer."

A few days after he said "Mr. Friedlandor is going away this evening and if the creditors replevied them goods he would make them pay dollar for dollar for them and it was lucky that I sold out when I did, for if I had waited until Monday afternoon I would have been attached."

*Lansing's Evidence.* R. p. 69. "Then Kempnor said my bill of sale is good enough; I paid the full amount, one hundred cents on the dollar". "Kempnor said let them replevin; I will get two dollars for every dollar."

EIGHTH. *At the time of the transaction, Kempnor feared or rather, expected litigation with Levinson's creditors, who were likely to seek their pay for the portion of the goods recently purchased, from the goods themselves, if transfered to him in the manner proposed, and boasted how he would make money out of said creditors, in case of such litigation.*

The evidence establishing this point is referred to under the previous head.

*Assumptions by Kempnor.*

He sought to prove that he paid as much for these goods as they were really worth at the time, but failed. Some of his witness testified that they were worth less than they cost, but none ventured to swear that they were worth only 55 per cent of their cost.

This evidence was met by proof by those who knew all about the matter, and that the new goods were purchased at market prices, and the others were not depreciated so as to be worth only 55 per cent of their cost.

The evidence, as it stands shows a ballance being against Kempnor.

But if Kempnor's evidence remained unanswered, and showed that the goods were worth only 55 cents of their

cost, it would have no bearing upon the real issue, which is, the *motive with which the sale was made.* The full value may have been paid, and the motive have been to hinder and delay creditors in collecting their debts of Levinson.

Kempnor's evidence, if admitted to be all true, and in no way rebutted, or overcome, does not establish a defence. The Complainants evidence would remain unswered, and unanswerable.

The facts given above conclusively prove that the sale was made to hinder and defraud the creditors of Levinson in collecting their debts due from him.

*Questions of Law.*

Neither argument or authorities need be cited to show that sales, made with the intent to hinder and delay creditors, in the collection of their debts, are null and void, and that Courts of Equity are bound so to adjudicate.

The rights of judgment and execution creditors, under such circumstances, are not open to question. They are entitled to whatever can be made out of the property when freed from claim under such fraudulent sale.

Authorities upon such questions cannot be needed, nor can the court willingly have its time consumed, in listening to an argument upon them.

R. H. GILLET,
*Of Counsel for Respondents.*

Dated September 27, 1869.